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Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

ENRIQUE ROSARIO ROBLES
Petitioner(s)

v.

ROBERTO PALOU BOSCH, et.al.,
Respondent(s)

On Petition For Writ Of Certiorari
To The United States District Court for the
District of Puerto Rico and the First Circuit
Court of Boston.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW:

Respondent Palou-Bosch was taking money ($110,000) from Petitioner's business in the guise of earnings to split between the two partners. He filed a Complaint asking seven million (7,000,000) dollars through an oral *quota litis*, which is a method that has been abolished; fabricated an astronomical record of worked hours to compare both and said it was the same: 1/3 or 1.7 millions dollars. Appraised the property in question and kicked him out of business. If such oral contract is enforceable under art. 1227 of the Civil Code of Puerto Rico, can a contract exist without cause and cause of action?

According to general principle of law, art. 1432 C.c. (Civil Code of Puerto Rico) the

contract of a lawyer is of service, not of result (obra), for that reason, no *quota litis* can rest on a case result and is illegal. How can such conduct be permitted?

Whether a Superior Court Judge of Puerto Rico can disregard such principles against *quota litis* and the orders of the Bankruptcy Court and keep Petitioner out of his business violating his civil rights?

Both judges and lawyers have immunity if civil rights have been violated?

What kind of functionary of the Court is a lawyer that robs his client and deprives him of his property violating the Fifth and Fourteenth amendments against "taking of property' in the guise of " alas *quota litis*?"

Is the ethical code inapplicable or discriminatory applicable in this case?

PARTIES TO THE PROCEEDING

Petitioner in Case No. 06-1247 before the United States District Court for the District of Puerto Rico and before this Court, is Enrique Rosario Robles *pro-se*.

The respondents are Roberto Palou Bosch and the Palou Bosch Conjugal Society; José Rivera Cordero and Rivera Cordero Conjugal Society; Georgina Candal Segurola.

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Humminski v. Ruthland County 148 F. Supp. 2d.373 (2001)

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STATUTES:

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Code Napoleon, art.7

BOOKS:

Cardozo BenjamIn - *The nature of judicial process*, New Haven Yale University Press, (1921).

Condomines Valls, F. *El recurso de casación en material civil*, Barcelona, España : Bosch,(c1978).

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IN THE UNITED STATES SUPREME COURT

ENRIQUE ROSARIO ROBLES,
Petitioner

NO.

-vs-

ROBERTO PALOU BOSCH, AND THE CONJUGAL SOCIETY;
JOSE RIVERA CORDERO, AND THE CONJUGAL SOCIETY;
GEORGINA CANDAL SEGUROLA,
Respondents

CERTIORARI

PETITION

TO THE HONORABLE COURT:

Comes now Enrique Rosario Robles by his own right and respectfully alleges and prays as follow:

I. JURISDICTION

The First Circuit court of Boston entered a judgment of dismissal on May 24, 2007. On June 21, 2007 the motion to set aside was affirmed. We

believe that time runs from this point, but on July 2, 2007, Boston entered the mandate.

II. JUDGMENT FOR REVIEW

Case no. 06-2529 of the First Circuit of Boston. The District Court never handled a written statement, just a concise and short computer expression saying that judges are immune.

III. STATEMENT OF FACTS

Petitioner, Enrique Rosario Robles, was co-owner of a slaughterhouse with two other partners and had to get rid of one of them by court judgment. His legal counsel in the case against his partner, respondent Roberto Palou Bosch, took over Mr. Robles' business for his legal services and threw him out; trying to collect the amount of seven (7) million dollars by asking an oral *quota litis*.

Respondent, Palou Bosh, took the legal fee of $25,000 granted in the division case. He and the other attorney, Jose Rivera Cordero, in the guise of earnings to be shared by the other partner, designed a scheme to rip the Petitioner from his property. He told to the Petitioner, Enrique Rosario Robles, that the 1/3 share of the business that represented the eliminated partner was his. When respondent Palou Bosch was suspended as attorney, instead of resigning this case, he asked Enrique Rosario Robles to make the payments on his BMW and cover the tuition for his children's private school. He then filed a suit to collect a legal fee of seven million (7,000,000) dollars, after 10 years.

He did not have a record of contemporaneous hours of work and fabricated one of 11,833 hours, which would be equivalent to holding trial from

Monday to Friday, 6 hours a day, for 13 1/2 years. He then compared said record with the 1/3 *quota litis*; claiming that both are the same.

In the Complaint he said that he only collected $58,000, but during trial he had to admit by stipulation that he had already recieved $110,000.

The rule of law ("estado de derecho") abolished the *quota litis* because a lawyer has a contract of service, not product. (in Spanish "obra") He cannot appraise the property and the good will in order to collect 1.7 million dollars.

Georgina Candal Segurola acted as judge and party. She compared the said oral *quota litis* with the erroneous build up record of hours (a fraudulent act) and claimed that they were the same. She ignored the doctrine against *quota litis* and gave him 1.7 million dollars' judgment. She

also ignored the stay order of the Bankruptcy Court and sent the Marshall to lock out Enrique Rosario Robles from his business in May, 2006, which he is stilled locked out of today. A lock out is conceptually the same as a lock in, which is a clear violation of civil rights regarding one's freedom of movement.

IV-ARGUMENT

1. It is very clear that "general principles" of law are above the constitution.

A mandate is also applicable to lawyers. Article 1609 of the Civil Code of Puerto Rico says that there is a duty against torts and dishonesty, and this applies to the case of Palou Bosch. Therefore, there cannot be any immunity whatsoever.

2. Article 1432 of the Civil Code of Puerto Rico distinguishes between the concepts of a "contract of service" and an "*obra.*" The contract of service does not depend on results. Therefore, there cannot be a *quota litis* of the property as a whole. The *quota litis* was eliminated federally and in the state in the case of Puerto Rico, ITT Intermedia (1997).
3. Article 1227 of the Civil Code of Puerto Rico says that a contract without a cause or illegal cause, does not exist. Palou Bosch did not have a written contract of hours of work. Nor did he have a record of hours of work. He was taking from the earnings of the business and cheating don Enrique Rosario Robles out of $110,000. He did not have a cause of action.
4. The claim that the doctrine that a lawyer is immune because he is "a functionary of the

Court" collapses the general principles of law and is against the civil rights of his clients in cases such as this. In this case, the taking of property is protected by Amendment V and Amendment XIV. Due process is defined as "anything that shocks the conscience."

5. The acts of Palou Bosch collapsed the ethical code. The ethical code is applicable to him. Therefore, he is not immune in his wrongful acts. Both the ethical code and the general principles of law do not have exceptions. Otherwise, they would collapse. Palou Bosch is an awful precedent to be quoted.
6. The judge is liable if he violates Civil Rights. This was decided in the case of Huminski v. Rutland, DU 2001, 18 F. supp. 2d. 373. A general principle of the law in the Civil Law system, art. 7 of the Civil Code of Puerto Rico,

quoted by Judge Cardozo, is that the "Judge is liable if he/she acts against the law", he named it "the trumpet call."

7. In a conspiracy acting as both judge and party, Judge Georgina Candal Segurola did not apply the general principles of law, she ignored the doctrine in ITT against *quota litis*, she ignored the ethical code, she built up a hyperbolic record of 11,833 hours and compared it with the *quota litis*, she appraised the Petitioner's property as if legal fees depended on the market, she disobeyed the stay order of the Bankruptcy court and she restricted the petitioner's movement by locking him out of his business from May 2006 to present day; which is the same as a lock in. Even from the face of the complaint, one could

easily see that he was asking an oral *quota litis* of 7 million dollars.

V-CONCLUSIONS

Is the Civil Right Act of the United States a sanctuary to protect a class such as lawyers and judges that violate civil rights?

Is the United States a isolated country with doctrines that are against the general principles of law?

Our straight answer: no.

WHEREFORE: WE move the Honorable Court to revoke such "judgments" of the lower Court and save Petitioner from a despoil of his property, uphold the "*estado de derecho,*" (state of law"), uphold the ethical Code, uphold the general principles of law, eliminate the *quota litis*, thereby saving the

doctrine, and order that the case be continued and tried by jury.

Carolina, Puerto Rico, 31 July 2007.

CERTIFICATION: mailed by certified mail to attorneys.

Enrique Rosario Robles

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, et als Plaintiffs -vs- ROBERTO PALOU BOSH, et als Defendants	CIVIL NO. 06-1247 (DRD) CIVIL RIGHTS

MOTION IN OPPOSITION
TO DISMISS FROM GCS

TO THE HONORABLE COURT:

Comes now the plaintiff through the undersigned attorney and respectfully alleges and prays as follows:

1. Defendant Georgina Candal Segurola (GCS) filed a motion to dismiss with a synopsis of allegations. In short, she missed the discussion of Section 1983 of the Civil Rights Act, the cases that are quoted applicable to violations of civil rights by the Judges, and the cases tat eliminate or delete the *quota litis*. In summary, she alleges that Section 1985 dealing with conspiracy, is only

applicable to African Americans or in cases of racial discrimination, that a Judge has absolute or qualify immunity, to the extreme to assert:

> **". . . that it is better to leave unredressed the wrong done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation(p.7)."**

Alas!

2. For more than one hundred years of American history, the maxim "UBI JUS, IBI REMEDIUM has stood." [1] Supreme Court justice Benjamin Cardozo said since 1921:

> **"In brief, there are jural principles which limit the freedom of the judge, and, indeed, in the view of some writers, which we don not need ot endorse, the freedom of the state itself. Life may be lived, conduct may be ordered, it is lived and ordered, for unnumbered human beings without bringing the field where the law can be misread, unless indeed the misreading be accompanied by conscious abuse of power. Their conduct never touches the borderland, the penumbra, where controversy begins. They go from birth to**

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[1] Sedwick, Theodore "AMERICAN LAW, The formative years", 1972, Arno Press, p.53

death, their action restrained at every turn by the power of the state, and not once do they appeal to judges to mark the boundaries between right and wrong. I am unable to withhold the name of law from rules which exercise this compulsion of the fortunes of mankind.; [1]

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the "primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains." [2]

I – VIOLATIONS OF CIVIL RIGHTS BY GCS:

We quoted the cases that say that judges are not immune for violations of civil rights under Section 1983:

Huminski v. Rutland Country, DV 2001,148 F.Supp. 2d. 373 (restrain of movement)
Pierson Ray, 386 US 547
Zarcone v. Perry, 438 F.Supp.788.

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[1] Cardozo, Benjamin N. "The Nature of the Judicial Process" ed. 1962, Yale University Press, p. 130

[2] Cardozo, ibid p.141

We do not have a word from such defendant in relation to those cases, although since 1921, judge Cardozo said:

> "Not for us the barren logomachy that dwells upon the contrast between law and justice, and forgets their deeper harmonies. For us rather the trumpet call of the French "code civil:"
> "The judge who shall refuse to give judgment under pretext of silence, of the obscurity, or of the inadequacy of the law, shall be subject to prosecution as guilty of a denial of justice.: [1]

The same is outlined in article 7 of Puerto Rico's Civil Code. Intentional acts are part of such article as sustained by legal authority as Manresa, Scaevola, etc.

First: Although we alerted the judge GCS of the ITT Intermedia case and the doctrine established in Gendel Den v. Larkin, she said "that's there in the Federal Court;" implying that she did not care to regard them, despite their applicability.

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[1] Cardozo, ibid p. 141.

Second: Although we pinpointed the ethical mess that this case had turned into, she said "do not talk about it.

Third: Although we pinpointed that a lawyer cannot ethically acquire an interest in his client's properties nor can he appraise said property to collect a legal fee, when this happened and the appraisal was handed to us the day of the trial, she accepted it instead of disallowing it.

Fourth: in the middle of the case, she said that if they paid the accountant $150,000 for his services, the Plaintiff in this case has to pay the *quota litis* requested.

Fifth: On five separate occasions she requested the parties for a settlement and even tried to go to another lawyer, a general employee of the plaintiff, to decide for the plaintiff.

Sixth: She permitted a reconstruction, non-contemporaneous, lodestar record of hours; a fraud and violation of the status of fraud per se and perjury. [1]

Seventh: She permitted and amount of 11,800 hours, fraud and perjury per se. Jumped from the lodestar to a *quota litis* of two million dollars. Alas! An amount he will never earn in his entire life.

Eighth: She did not make Jorge Morales, the other partner in the society, party in this case. Therefore, his attorney Mercado, will be party in this case as a conspirator to attained the Plaintiff's property.

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[1] Hillman, Robert A. "Principles of contract Law", West 2004, p.115 "the statute of fraud avoids the likehood of permitting oral Prof. Of Duch transactions World encourage fraudulent claims by swindlers gambling tha they can glibly persuade a jury to enforce a nonexistent oral agreement."

The first English Statute was enacted almost 300 years ago endeavored to be upheld by perjury and subordination of perjury" Cf. 29 CAR.2,C.# 16771'Estate of Stephens-49 P. 2d.177, 179 (Haw 1970).

Ninth: She used the contempt procedure to subdue the Plaintiff into an agreement. This is a violation of the constitutional prohibition for debts.

Tenth: She disobeyed the stay order from the Federal Bankruptcy Court.

Eleventh: She sent two marshals to get the Plaintiff's keys and lock him out of his business that is essentially the same as a lock in, a restriction of movement.

Twelfth: She violated federal law against taking more than 25% of his salary; condemning him to indigence.

II. SECTION 1985

We already said that this Section is applicable to private parties. In this particular case, it was a denial of equal protection of law, and undermined the due process of law. Such cases as ITT Intermedia and Grendel Den are the rule of law that is the reason for the Defendant's omission of any discussion of theses cases.

Those cases are part of the Civil rights Act and the rule of law, as defined:

> "Law is the body of general principles and of particular rules in accordance with which civil rights are created and regulated and wrongs prevented or redressed." [1]

III SECTION 1988

This is the section that regulates legal fees to a lodestar record of hours; from it sprang the cases quoted.

Finally, we finish our argument; the same way Cardozo finished his everlasting work 43 years ago when a paperbound book cost $1.25:

> " The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years...
> The future, gentlemen is yours. We have been called to do our parts in an ageless

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[1] Beale, "Conflict of Law", p. 132 sec. 114. Cf. Cardozo, ibid p. 131

> process. Long after I am dead and gone, and my little part in it is forgotten, you will be here to do your share, and to carry the torch forward. I know that the flame will burn bright while the torch is in your keeping."[1]

WHEREFORE, we move the Court to deny such motion and give a redress for the trespassing of his property and deprivations suffered according to jurisprudence, law and justice served.

Respectfully submitted at Carolina, Puerto Rico, August 30th, 2006.

Certify: electronically notified defendants.

s/ IVAN PAGÁN HERNÁNDEZ
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[1] Cardozo, ibid p. 178, 180

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, et als Plaintiffs, -vs- ROBERTO PALOU BOSH, et al. Defendants.	CIVIL NO. 06-1247 (DRD)

MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6).

TO THE HONORABLE COURT:

COMES NOW, codefendant Hon. Georgina Candal Segurola, without submitting to the Court's jurisdiction and through the undersigned attorney very respectfully avers and prays as follows:

I. INTRODUCTION

As per the allegations in the complaint, this is an action seeking injunctive relief and monetary damages. Plaintiffs present claims under 42 U.S.C. §§

1981,1983,1985 and 1988 and the Fourteenth Amendments of the United States Constitution. Plaintiff also alleges jurisdiction based on the following cases: *Grendel Den v. Larkin*, 749 F. 2d 945 (1st Cir. 1984); *Hanralan v. Hampton*, 446 U.S. 754; *Blun v. Stenson*, 465 U.S. 465; *Hensley v. Echerhart*, 461 U.S. 424; Blanchard v. Bergeron, 489 U.S. 87; *City of Riverdale v. Rivera*, 477 U.S. 561; doctrine established locally; *Lopez Vicil v. ITT Intermedia, Inc.* 97 J.T.S. 104, *In Re Criado Vazquez*, 2001 J.T.S. 157; *In re Barlucea Cordoves*, 2001 J.T.S. 144; *In re Concepción Peña*, 2001 J.T.S. 97.

This complaint against appearing codefendant should be DISMISSED WITH PREJUDICE since Plaintiffs have failed to state a claim which upon relief can be granted being that appearing codefendant enjoys the protection of absolute immunity.

II. SYNOPSIS OF ALLEGATIONS

Regarding appearing codefendant, Plaintiff alleges that:

> "8. Gerogina Candal Segurola is the judge and John Doe, her husband in the legal society. She encroached the property rights of the Plaintiff, granting an oral quota litis of 1.8 millions[sic] in a contempt procedure against the constitutional prohibition for debts; disobeying the stay order of the Bankruptcy Court, locking him out of business; executing accounts of perons not parties in this case; YON C. ROSARIO, WALESKA FEBUS SUAREZ AND NESTOR ORTEGA LOPEZ."

III. STANDARD FOR MOTION TO DISMISS

When addressing s motion to dismiss brought under rule 12 (b)(6) of the Federal Rules of Civil Procedure, the Court must "accept as true all well pleaded factual and indulge all reasonable inferences in the plaintiff's favor". Doyle v. Hasbro, Inc. 103 F. 3d 186, 190 (1st Cir. 1996). Dismissal under Rule 12 (b)(6) is "appropriate if the facts alleged, taken as true, do not justify recovery". Id. The standard is not quite as feeble as first appears.

> "The pleading requirement...is not a 'toothless tiger'. [Citations omitted]. In order to survive a motion to dismiss, plaintiffs must set forth factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery. [Citations omitted]. Although all inferences must be made in the plaintiff's favor, this Court need not accept 'bald accretions unsupportable conclusions, periphrastic

> **circumlocutions, and the like. [Citations omitted]"**

To put it simply, the court must look leniently at the allegations in the plaintiffs' complaint and determine if those allegations "can reasonably admit a claim". Id.

IV. GROUNDS FOR DISMISSAL

A. **Plaintiff's claims against the codefendant in her official capacity are barred by the Eleventh Amendment.**

Appearing codefendant asserts that the allegations made against her in her official capacity should be dismissed since any claim in that capacity is precluded by the Eleventh Amendment.

The Eleventh Amendment of the United States Constitution provides:

" The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States citizens of another State, or by citizens or subjects of any Foreign State."

It is well established that the Eleventh amendment prohibits actions in Federal Courts against

an unconsenting state. *Seminole Tribe of Florida v. Florida,* 517 US 44, 116 S. Ct. 1114, 1122, 134 L. Ed.2d 252 (1996); *Will v. Michigan Department of State Police,* et. Al, 491 US 58, 109 S. Ct. 2304, 105 L. Ed.2d 45 (1989) *Papasan v. Allen,* 478 U.S. 265, 276, 92 L.Ed 209 , 225, 106 S. Ct. 2932 (1986) ; *Pennhurst State School Hospital v. Halderman,* 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed 2d 122 (1984): Quern v. Jordan, 440 U.S. 332 , 99 S. Ct. 1139, 59, L. Ed. 2d 358 (1979); *Edelman v. Jordan,* 415 U.S. 651, 662-663, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).

Furthermore, it is settled law that the Cononwealth of Puerto Rico "enjoys the fill benefits of the Eleventh Amendment". *Fernández v. Chardon,* 681 F.2d 42, 59, n. 13 (1st Cir. 1982); *See also Colón Rivera v. Puerto Rico Department of Social Services,* 736 F.2d 804 (1st Cir. 1984); *Ramírez v. Puerto Rico Fire Services,* 715 F.2d 694, 697 (1st Cir. 1984); *Ezratty v.*

Commonwealth of Puerto Rico, 648 F.2d 770,776 n.7 (1st Cir. 1981); *Litton Industries, Inc. v. Colón*, 587 F.2d 70, 72 (1st Or. 1978); *Ochoa Realty Corp. v. Faría*, 618 F.Supp, 434, 435 (D.P.R. 1985); *Ursulich v. Puerto Rico National Guard*, 384 F.Supp. 736 (D.P.R. 1974); *Culebras Enterprises Corp. v. Rivera Ríos*, 838 F.2d 506, 516 (1987); and *Futura Development v. Estado Libre Asociado*, 144 F.3d 7, 12-13 (1st Or. 1998). Thus, Puerto Rico may not be sued for damages in federal court unless the commonwealth has consented, or its immunity has been waived, or Congress has overridden the immunity. *Ramírez*, 715 F.2d at 697.

The Eleventh Amendment bar to suits in federal courts by private parties against an unconsenting state extends to governmental instrumentalities, which are an arm or "alter ego" of the State. *Pennhurst v. Halderman*, 465 U.S. at 100; *Mt. Healthy City School District v. Doyle*, 429 U.S. 274, 280-281, 97 S.Ct. 568, 50 L.Ed. 2d

471 (1977); *Edelman, supra*; *Ainsworth Aristocrat Int'sl Pty. Ltd v. Tourism Co. of P.R,*. 818 F.2d. 1034, 1036 (1st Cir, 1987); *Ochoa Realty Corp., supra*; *Ursulich*, 384 F. Supp. at 737- 38.

This is so because a state only has existence through its instrumentalities that carry out its functions and establish its public policy. State agencies and departments, are usually alter egos or branches of the state and, thus, suits against these instrumentalities are in fact suits against the state itself. *Mt. Healthy*, 429 U.S. at 280; *Scheuer v. Rhodes*, 416 U.S. 232, 237, 94 S.Ct. 1683, 40 L.Ed. 2d 90 (1974); *Culebras Enterprises Corp., supra*; *Paul N. Howard v. Puerto Rico Aqueduct and Sewer Authority*, 744 F.2d 880, 886(1st. Cir. 1984); *Pérez v. Rodriguez Bou*, 575 F.2d 21, 25 (1st. Cir, 1978); C Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, §3524 at 136 (1984) ["if the governmental unit simply is functioning as an alter ego of the state in

accomplishing some public purpose of the Eleventh Amendment"].

The Eleventh Amendment bars claims for monetary damages against defendant in its official capacity as state's agent. This bar operates since a suit against an official acting in his or her official capacity is not a suit against the official's officer rather it is a suit against the sovereign state. *Brandon v. Holt*, 469 U.S. 464, 471, 105 S.Ct.873, 83 L.Ed. 2d 878 (1985); *Kentucky v. Graham*, 473 U.S. 159, 169, 105 S.Ct. 3099, 87 L.Ed. 2d 114 (1985).

The Supreme Court found in *Monell v. New York Dept of Social Services*, 436 U.S. 658, 690, n. 55,98 S. Ct. 2018, 56 L.Ed.2d 611(1978), that "official capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent." Therefore, an official capacity suit is not a suit

against the official in fact, but the real party in interest is the entity *Graham*, 473 U.S. at 166.

The Supreme Court in *Will* 491 U.S. at 71, in confirming this position held:

> *"We see no reason to adopt a different rule in the present context, particularly when such a rule would allow petitioner to circumvent congressional intent by a mere pleading device."*

As such, any claim against appearing codefendants in their official capacity should be dismissed as barred by the Eleventh Amendment. The real party in interest in the instant case would then be the Commonwealth of Puerto Rico, who is protected by the Eleventh Amendment and has not waived its immunity to be sued. Therefore, it is respectfully requested that this Honorable Court dismisses with prejudice the instant complaint against appearing codefendant in her official capacity.

B. Appearing codefendant enjoys the protection of absolute immunity.

Title 42 U.S.C. §1983 is written in broad terms. It purports to subject "[e]very person" acting under color of state law to liability for depriving any other person in the United States of "rights, privileges, or immunities secured by the Constitution and laws." The Court has consistently recognized, however, that § 1983 was not meant "to abolish wholesale all common-law immunities." *Pierson v. Ray*, 386 U.S. 547, 554, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967). The section is to be read "in harmony with general principles of tort immunities and defenses rather than in derogation of them." *Imbler v. Pachtman*, 424 U.S. 409, 418, 96 S.Ct. 984, 989, 47 L.Ed.2d 128 (1976); see also Tenney v. Brandhove, 341 U.S. 367, 71 S.Ct. 783, 788, 95 L.Ed.2d 1019 (1951). In addition, we have acknowledged that for some "special functions," *Butz v. Economou*, 438 U.S. 478, 508, 98 S.Ct. 2894, 2911, 57 LEd.2d 895 (1978), it is" 'better to leave unredressed the wrongs done by

dishonest officers than to subject those who try to do their duty to the constant dread of retaliation."' *Imbler, supra*, 424 U.S. at 428, 96 S.Ct., at 994 (quoting *Gregoire v Biddle*, 177 F.2d 579, 581 (CA2 1949)(L.Hand, J.), cert. denied, 339 U.S. 949, 70 S.Ct. 803, 94 L.Ed. 1363 (1950)). *Burns v. Reed*, 500 U.S. 478,484, 111 S.Ct. 1934, 1938, 114 L.Ed.2d 547 (1991).

Under the current legal theory, immunity attaches or does not attach depending on what kind of action was performed rather than on who performed it." *Acevedo Cordero v. Cordero-Santiago*, 958 F.2d 20, 23 (1 Cir. 1992). The doctrine necessarily protects the authorized performance of "paradigmatic judicial acts" — acts which entail discretionary decision-making in resolving disputes or adjudicating private rights. *Forrester v. White*, 484 U.S. 219, 227 (1988); *see also Antoine v. Byers & Anderson*, 113 S.Ct. 2167, 2171 (1993) (protection from private suits for discretionary

acts is needed to assure **"the independent and impartial exercise of judgment vital for the judiciary"**).

Suits for monetary damages are meant to compensate the victims of wrongful actions and to discourage conduct that may result in liability. Special problems arise, however, when government officials are exposed to liability for damages. To the extent that the threat of liability encourages these officials to carry out their duties in a lawful and appropriate manner, and to pay their victims when they do not, it accomplishes exactly what it should. By its nature, however, the threat of liability can create perverse incentives that operate to *inhibit* officials in the proper performance of their duties. In many contexts, government officials are expected to make decisions that are impartial or imaginative, and that above all are informed by considerations other than the personal interests of the

decision maker. Because government officials are engaged by definition in governing, their decisions will often have adverse effects on other persons. When officials are threatened with personal liability for acts taken pursuant to their official duties, they may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct. In this way, exposing government officials to the same legal hazards faced by other citizens may detract from the rule of law instead of contributing to it. *Forrester v. White*, 484 U.S, at 223.

Such considerations have led to the creation of various forms of immunity from suit for certain government officials. Aware of the salutary effects that the threat of liability can have, however, as well as the undeniable tension between official immunities and the ideal of the rule of law, this Court has been cautious in

recognizing claims that government officials should be free of the obligation to answer for their acts in court. Running through our cases, with fair consistency, is a "functional" approach to immunity questions other than those that have been decided by express constitutional or statutory enactment. Under that approach, we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions. Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy, and the Court has recognized a category of "qualified" immunity that avoids unnecessarily extending the scope of the traditional concept of absolute immunity. *Id.* at 223-24 (citing, *e.g., Scheuer v, Rhodes*, 416 U.S. 232, 94

S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Butz v. Economou, supra*; *Harlow v. Fitzgerald* 457.U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)).

As a class, judges have long enjoyed a comparatively sweeping form of immunity, though one not perfectly well-defined. Judicial immunity apparently originated, in medieval times, as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error. *See Block, Stump v. Sparkman* and the History of Judicial Immunity, 1980 Duke L.J. 879. More recently, this Court found that judicial immunity was "the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country." *Bradley v. Fisher*, 113 Wall. 335, 347, 20 L.Ed. 646 (1872). Besides protecting the finality of judgments or discouraging inappropriate collateral

attacks, the *Bradley* Court concluded, judicial immunity also protected judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants. *Id.*

The common law's rationale for these decisions-freeing the judicial process of harassment or intimidation-has been thought to require absolute immunity even for advocates and witnesses. *Forrester v. White*, 484 U.S., at 225-26 (citing *Briscoe v. LaHue*, 460 U.S. 325, 103 S.Ct. 1108, 75 L,Ed.2d 96 (1983); *Butz v. Economou*, 438 U.S., at 512).

The purposes served by judicial immunity from liability in damages have been variously described. In *Bradley v. Fisher*, *supra*, at 348, and again in *Pierson v. Ray*, *supra* at 554, the Court emphasized that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have. This is the

principal characteristic that adjudication has in common with legislation and with criminal prosecution, which are the two other areas in which absolute immunity has most generously been provided. If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability. *Forrester v, White*, 484 U.S., at 226-27.

When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges. Here, as in other contexts, immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches. *Id.* at 227.

As per Plaintiffs' own allegations the appearing codefendant is brought in the instant complaint exclusively pursuant to her official functions as judge. Thus, appearing codefendant is due absolute immunity for such action performed as part of her duties at judge in State Court. Therefore, it is respectfully requested that this Honorable Court DISMISSES WITH

PREJUDICE the instant complaint filed against the appearing codefendant.

C. Failure to state a claim under 42 U.S.C. §1985.

Plaintiffs have failed to properly plead a claim based on 42 U.S.C. § 1985. In order to prove a conspiracy based on the violation of a person's civil rights, a Plaintiff must prove the following elements: (1) two or more persons must conspire; (2) to deprive either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) one or more of the conspirators must have done or caused to be done an act in furtherance of the object of the conspiracy; and (4) the Plaintiff must have suffered either an injury to person or property or a deprivation of a constitutionally protected right or privilege as a result of the conspiracy. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Romero Barceló v. Hernández Agosto*, 75 F.3d 23, 34 (1

Cir. 1996); *Andrade v. Jamestown Housing Authority*, 82 F.3d 1179, 1192 (1 Cir. 1996).

Griffin v. Breckenridge, added a fifth element; that is, "a plaintiff may recover there under only when the conspiratorial conduct of which he complains is propelled by 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus.'" 403 U.S. at 102; *Aulson v. Blanchard*, 83 F.3d 1 (l Cir. 1996).

The civil rights conspiracy statute does not apply to all tortious, conspiratorial interference with the rights of others, but only to conspiracies motivated by some racial, or perhaps otherwise class-based, invidiously discriminatory animus. *See* 42 U.SC. § 1985(3); *Hall v. Doering*, 1998 WL 58874 (D. Kansas 1998). A litigant wishing to assert a claim under 42 U.S.C. § 1985(3) must therefore allege there was "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin*, 403

U.S. at 102. Plaintiff has failed to allege any racial or other class-based discriminatory animus in the complaint. Indeed, he has even failed to identify the class or minority to which he belongs, a prerequisite for an action based on § 1985.

Furthermore, the complaint does not contain any specific allegations regarding the purported conspiracy. For example, the pleading does not allege the role the appearing codefendant played in the conspiracy, does not identify specific acts taken in furtherance of the conspiracy, and does not identify the appearing codefendant as an individual who furthered the alleged conspiracy. *See* Cole v. N.Y. Dept. of Correctional Services, 1998 WL 15955 (W.D.N.Y. 1998).

The Supreme Court has cautioned against expanding § 1985(3) into a "general federal tort law." *Griffin*, 403 U.S. at 102. That was to be avoided, *Griffin* instructed, "by requiring, as an element of the cause of

action, the kind of invidiously discriminatory motivation stressed by the sponsors of [1985(3)]." *Id.* at 100.

In order to prevail in an action under § 1985(3), it is not sufficient for a plaintiff to show that a federally protected right has been affected, "the claimant must show that the predominant purpose of the conspiracy was interference with, or punishment for, the exercise of that right." *Spencer v. Casavilla*, 44 F.3d 74, 79 (2 Cir. 1994).

Being that Plaintiffs failed to meet the requirements needed to allege a conspiracy under § 1985, it is respectfully requested that this Honorable Court DISMISSES WITH PREJUDICE such claim against appearing codefendant.

D. Failure to state a claim under the Fourteenth Amendment.

The Due Process Clause of the Fourteenth Amendment has two components: procedural due process and substantive due process. García v. City of

Albuquerque, 232 F.3d 760, 769-73 (10th Cir. 2000) (court rejected plaintiff's procedural and substantive due process claims). While procedural due process ensures that citizens have procedural safeguards prior to deprivation of rights, substantive due process limits the impingement of certain fundamental rights regardless of process. *Thomas v. Cohen*, 304 F.3d 563, 578 (6th Cir. 2002). Procedural due process ensures that a state will not deprive a person of life, liberty, or property unless fair procedures are used in making that decision, while substantive due process guarantees that a state will not deprive a person of those rights for an arbitrary reason regardless of how fair the procedures used in making the decision. *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1253 (10th Cir. 1998).

In viewing a procedural due process claim, the court conducts a two-part inquiry: (1) whether the defendants deprived the plaintiff of a constitutionally

protected liberty or property interest; and (2) if so, whether that deprivation occurred without due process of law. *Williams v. Seniff*, 342 F.3d 774, 786-87 (7th Cir. 2003). *See also, Mitchell v. Frankhauser*, 375 F.3d 477, 480 (6th Cir, 2004)(noting that the two step process is (1) whether the plaintiff has a property interest entitled to due process protection; and (2) what process is due).

In *Jefferson v. Jefferson County Public School Systems*, *supra*, at 588, the court held that a plaintiff in a § 1983 procedural due process case must plead and prove the inadequacy of state or administrative processes and remedies to redress her alleged due process violations. If satisfactory state procedures are provided in a procedural due process case, then no constitutional deprivation has occurred despite the injury. The plaintiff must prove the inadequacies of state remedies as an element of her constitutional tort.

Plaintiffs allege that appearing codefendant violated their due process rights under the Fourteenth Amendments. Nonetheless, Plaintiffs aver that he had his day in Court and also states that the Court arrived to conclusions and made Orders for the parties to comply with. Moreover, Plaintiff does not allege that such hearing was inadequate, only that he does not agree with the final conclusion reached by the Honorable Court through the appearing codefendant.

Being that Plaintiffs were awarded their day in court, their due process claim is frivolous and should be DISMISSED WITH PREJUDICE.

Therefore, being that the alleged violation of due process did not take place, it is respectfully requested that this Honorable Court DISMISSES WITH PREJUDICE such cause of action against appearing codefendant.

E. Plaintiffs' supplemental jurisdiction claims should be dismissed.

In the case at hand, plaintiff has also brought a number of claims under the laws of the Commonwealth of Puerto Rico pursuant to the supplemental jurisdiction of this Honorable Court. Since plaintiff has failed to allege any cause of action under federal law, the claim brought forth under supplemental jurisdiction should also be dismissed.

The assertion of supplemental jurisdiction over state law claims is within a federal court's discretion. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966). When supplemental jurisdiction is founded solely upon federal question and federal claim is dismissed, district court is free to dismiss remaining state claims without prejudice to renew them in state court. _*Keystone Builders, Inc. v. Floor Fashions of Virginia, Inc.*, 829 F.Supp. 181 (W.D. Va. 1993). *See also* Dibbs v. Gonsalves, 921 F.Supp. 44, 51 (D.P.R. 1996); *Soto v. Carrasquillo*, 878 F.Supp. 324,

327 (D.P.R 1995); *Libertad v. Welch*, 854 F.Supp. 19, 35 (D.P.R. 1993); and *Haft v. Eastland Financial Corp.*, 755 F.Supp. 1123 (D.R.I. 1991).

In the absence of any constitutional violation by part of any of the appearing defendant, this Honorable Court, in the exercise of its discretion, should not assume supplemental jurisdiction either. Therefore it is respectfully requested that this Honorable court DISMISSES WITH PREJUDICE all supplemental jurisdiction causes of action against appearing codefendants.

V. QUALIFIED IMMUNITY

In the alternative, if this Honorable Court were to find that Plaintiffs' rights have been violated (and that the appearing codefendants' actions or omissions were somehow causally related to such violations), the codefendants would assert that they are entitled to the qualified immunity defense.

Qualified immunity is an affirmative defense against liability, which may be raised by state officials sued in their personal capacity. *See Gómez v. Toledo*, 446 U.S. 635, 640 (1980); *Scheuer v. Rhodes*, 416 U.S. 232 (1974). The general rule of qualified immunity is that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 427 U.S. 808, 818 (1982). This rule concentrates on the objective reasonableness of the official's conduct and eliminates from consideration all claims of the official's subjective state of mind. *Id.* at 819. As the qualified immunity defense has evolved it has been stated by the Supreme Court that "it provides ample protection to all but the plainly incompetent." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

In analyzing the qualified immunity defense, the court must take three steps. First, determine whether, as a matter of law, the plaintiff has alleged a deprivation of a constitutional right at all. *See County of Sacramento v. Lewis*, 118 S.Ct. 1708, 1714 n.5 (1998); *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). Second, the Court must determine whether the constitutional right in question was clearly established at the time of the alleged violation. *See St. Hilaire v. City of Laconia*, 71 F.3d 20, 24 (1st Cir. 1995). This, too, is a question of law. *See Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985). Only if these two questions are answered in the affirmative does the court address the particular conduct in question. *See Abreu-Guzmán v. Ford*, 241 F.3d 69 (D. Puerto Rico, 2001) (D. Dominguez). If the analysis reaches this point, the Court then asks whether a reasonable, similarly situated official would understand the challenged

conduct violated the right in question. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In the instant case, the complaint failed to survive the third step of the qualified immunity defense, since the Plaintiff was awarded due process of law when he was present at the Court hearings regarding the alleged violation in the instant complaint. Being that there is no violation to the Plaintiffs' constitutional rights as alleged, the appearing codefendants are entitled to qualified immunity from suit and from liability. *See Siegert*, 500 U.S. at 232.

In this case, Plaintiffs failed to fulfill these requirements as to appearing codefendants. Therefore, it is respectfully requested that this Honorable Court finds that appearing codefendants protected by the qualified immunity, and DISMISS WITH PREJUDICE the instant claim against them.

WHEREFORE, defendant respectfully requests that this Honorable Court grant the instant motion and DISMISSES WITH PREJUDICE the instant complaint against appearing codefendant.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to attorney IVÁN PAGÁN BERNANDEZ and CARLOS RODRÍGUEZ QUESADA to their electronic addresses of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of August 2006.

s/ROBERTO SÁNCHEZ RAMOS
Secretary of Justice

s/**VIVIAN GONZÁLEZ MÉNDEZ**
Deputy Secretary
In Charge of Litigation

s/**FRANCISCO OJEDA DIEZ**
Federal Litigation Director

s/**Idza Díaz Rivera**

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IN THE UNITED STATES DISTRIC COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES Plaintiff -v- ROBERTO PALOU BOSH, ETC Defendants	CIVIL NO. 06-1247 (DRD) COMPLAINT FOR DAMAGES

MOTION IN OPPOSITION TO DISMISS FOR SECOND TIME FROM DEFENDANT ROBERTO PALOU BOSCH

TO THE HONORABLE COURT:

Comes now the Plaintiff, Enrique Rosario Robles, through his undersigned Attorney and respectfully prays and alleges as follows:

1. Defendant Palou Bosch filed a motion to dismiss for a second time, a replica of the first, arguing lack of a state action and a tremble res judicata. An easy way and simple solution for a mammoth legal fee of

two million (2,000,000) dollars; something that may not occur in the span of his life.

2. For half of the work of eliminating a third partner (Lozada) of the slaughter house named Macelo La Muda, the bulk of it was performed by Professor Rivera Mercado (RIP). Hypothetically, if you add to his legal fee the same amount, both surmount four million (4,000,000) dollars, more than the real value of the Macelo. The magic kingdom of legal fees.

3. Defendant Palou Bosch avoided the discussion of the cases and statutes quoted applicable to the case.

4. A lawyer is not in the privileged position of the Judge and both are not immune from Section 1983 for violations of Civil Rights, as resolved in the following cases:

Huminski v. Rutland County, D.V. 2001,

148 F. SUPP. 2d. 373

PIERSON V. RAY, 386 US 547

5. Section 1985 of the Statute is applicable to private parties in the case of conspiracy, as it is in this case, to deprive and take over the Plaintiffs business. It is frequently pleaded in conjunction with Section 1983. The specific intention to deprive the Plaintiff of the equal protection or equal privileges and immunities. The statute implements the Fourteen Amendment due process of law:[1]

> "with the intent to deny any citizen the equal protection of law, or injure him or his property for lawfully enforcement, or attempting to enforce, the rights of any person, or class of persons, to the equal protection of laws;...in any case of conspiracy set forth in this section. if any one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party

[1] AM/ JUR. TRIAL, Vol. 15. pag. 578

so injured or deprived may have an action for recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Fagan and Bell said that after construction of the case of Collins v. Hardyman,[2] this Section is applicable to private party.[3]3/ Defendant Palou Bosch went so far as to tell the Plaintiff that the part in the Society of the eliminated Partner (Lozada) was his and that after disciplinary suspension as a lawyer, requested Plaintiff to cover the cost of his car and the school tuition of his kids.

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[2] 341 US 651, 95 L Ed. 1253, 71 S Ct 937

[3] Am. Jur. Trial Vol. 15, pag. 578 footnote 1

See concurring opinion joined by six Justices in

United States v Guest, 383

US 745, 16 Ed 2d. 239, 86 S CT 1170.

4. Section 1988 has to be constructed with the cases of Grendel's Den v. Lakin, [4] ITT INTERMEDIA,[5] and the Statute of Fraud.[6] The effect of the Statute of Fraud is to make a contract unenforcible or void and/or to prevent fraud and perjury believed to exist when the only evidence is recollection of witnesses.

The fraud and perjury is self evident in this case. A reconstruction of hours is fraud and perjury per se because is not contemporaneous.

The amount of 11,833 hours is fraudulent and perjury per se.

He jumps to a banned quota litis, eliminated as was said before. He entered into the statute of fraud and perjury by himself, pushed by his avarice.

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[4] 749 F. 2d. 945

[5] 5. 97 ITS 104 See Concepcion, 2001 JTS 97.

[6] Rest, Contract, secs. 405 (2), 217.

His ethical mess:

1. Acquiring an interest in his client's property.
2. Appraising his client's property to collect a legal fee.
3. Collecting fees from the gains of the society.
4. Presenting information that he is the owner of the third part of the Society pertaining to the deleted partner (Lozada).
5. Searching his bills and accounts.
6. Asking him to cover the cost of his bills and the tuition of his kids after disciplinary suspension.
7. Disobeying a stay order from the Bankruptcy Court.
8. Making an embargo of more than 25% of his salary, violating the Federal Law of illegal embargos.
9. Making a lock out, the same as a lock in, of

Plaintiff from his property, in violation of the Civil Rights Act of restriction of movement.

WHEREFORE, we move the Court to deny such motion and to grant the action invoke according to law, jurisprudence and justice served.

Carolina, Puerto Rico, August 15, 2006.

Certify-notified Palou Bosch, Usera, esq. and the parties electronically.

/s/ IVAN PAGAN HERNANDEZ
Attorney for Plaintiff
P.O. BOX 8765 CAROLINA
PUERTO RICO 00988
TEL/FAX 768-8652
i.pagan@onelinkpr.net

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, Plaintiff, -v- ROBERTO PALOU BOSH, ET ALS	CIVIL NO. 06-1247 (DRD) COMPLAINT FOR DAMAGES

INFORMATIVE MOTION

TO THE HONORABLE COURT:

Comes now the undersigned attorney for the Plaintiff and respectfully Inform an error in our previous motion. The new email address should be as follow:

i.pagan@onelinkpr.net

WHEREFORE: please take note of the correct address.

Respectfully submitted at Carolina, Puerto Rico, August 4, 2006.

Certify: notify Gregory T. Usera, Roberto Palou Bosch

s/IVAN PAGAN HERNANDEZ
Attorney for Plaintiff
BOX 8765 CAROLINA, PR
00988 TEL/FAX 768-8652
i.pagan@onelinkpr.net

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, etc. Plaintiff -vs- ROBERTO PALOU BOSH, ETC. Defendants.	Civil No. 06-1247 (DRD) Complaint for damages

MOTION TO ENTER DEFAULT

TO THE HONORABLE COURT:

Comes now Plaintiff through his undersigned attorneys and respectfully pleas and alleges:

1. In this historical and landmark case, Defendant Rivera Cordero argues that 42 USC sec. 1983 is inapplicable because there is no state action nor symbiotic relationships. He did not answer to other provisions of the statute calling them "myriad pleadings."

2. In short, jurisprudence is clear that in the case of

civil rights violations, even the judge is liable. We quote again the cases:[1]

Humminski v. Rutland, 148 F. Supp. 2d. 373 (lock out).
Pierson v. Ray, 386 US 547 (contempt).
Zarcone v. Perry. 438 F. Supp. 788 (Contempt for Coffee).

The lawyer in this case is in the same footing:

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[1] 1. We said that in the Civil Law tradition civil rights are considered "general principles of law" and stand above the Constitution; embodied in Puerto Rico Constitution that says that Civil Rights stands above the law: art. VII, sec. 3- "Ninguna enmienda a esta Constitución podrá ..o abolir su Carta de Derechos." ("no amendment can abolish the Bill of Rights").

2. His numbers squared are twelve (12) millions to divide in two to divide in three in order to collect two millions legal fee.

2.1- He was there asking the Court to lock out Enrique from his business, although he said the business society was not part in this case.

2.2- He was there trying hard that Enrique be condemned for contempt if he did not reach an agreement.

2.3- He was the other partner attorney, although he did not believe in collecting legal fees from the gains of the business, he was doing so in conspiracy with Palou Bosch.

2.4- He knew that Palou Bosch Complained to collect a legal fee of seven millions (7,000,000) dollars, in the long run will hurt his client Jorge Morales.

2.5- He was there advising the Judge to disobey the stay of proceeding order of the Bankruptcy Court, as the record shows.

2.6 He knew, or should know, that in the case of ITT Intermedia (1997) quota litis was banned, eliminated as a mean of collecting legal fees.

2.7- He knew that according to (Grendel's Den v. Larkin, 749 F. 2d.945 42 USC Sec. 1988 requires a lodestar records of hours, and that building a record of hours after the Complaint collecting seven millions in legal fees was not permissible.

2.8- He knew that according to Puerto Rico Civil Code, art. 1590, the only way to collect from the business society that was no party in the case is by the embargo of his interest of such society.

2.9- He was there in the Bankruptcy Court, not in behalf of his client Jorge Morales, but because he was part of the conspiracy to take Enrique Rosario's business from the beginning.

2.10- He knew that Palou Bosh was appraising the business land, buildings, going concern, gains. Did nothing or did much?

2.11- He could tell the Judge that federal law prohibited embargo of more than 25% of his salary.

3. All provisions, sections. 1988, 1981 and 1983 are applicable to private party. The conspiracy to rip Enrique Rosario of his business is there. He was lock out that is the same as lock in.

4. But let's see what he did: appraised six (6) times the real value of the Macelo La Muda. My God!

An Attorney can not collect a legal fee by an appraisal of his property. The appraisal is not the way to collect legal fee because the three approaches do not apply to an attorney:

4.1- The cost approach is not applicable to an attorney, he had nothing to do with the original cost.

4.2- The income approach is not applicable to an attorney, he had nothing to do with the gains of the business.

4.3- The market approach is not applicable to an attorney, he had nothing to do with the market.

To use an appraisal to collect legal fees is an atrocity. The entire business was donated to Palou Bosh, six (6) times/(2) the real value as the income approach shows:

Value = NOI/R

$2,000,000 = $160,000/ 8%.

Defendant Rivera Cordero was a party in the plan to take over Macelo La Muda. Not such goal can be archives.

WHEREFORE, respectfully we moves the Court to deny such motion and enter default .

Carolina, Puerto Rico, July 21, 2006.

Certify: electronically notified to the record address: Gregory T. Useras, Roberto Palou Bosh.

s/IVAN PAGAN HERNANDEZ
Appraiser No. 982
CARLOS RODRIGUEZ QUESADA
ATTORNEYS FOR PLAINTIFF
P.O. BOX 8765 CAROLINA, PR
00988
MARALIZA PAGAN @ G-MAIL.
COM. CERCLA @ COQUI N.NET

s/IVAN PAGAN HERNANDEZ
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1. We said that in the Civil Law tradition civil rights are considered "general principles of law" and stand above the Constitution; Puerto Rico Constitution says that Civil Rights stands above the law: art. VII, sec. 3- "Ninguna enmienda a esta Constitución podra..o abolir su Carta de Derechos." ("no amendment can abolish the Bill of Rights").

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, et al, Plaintiff, -v- ROBERTO PALOU BOSH, Defendants.	CIVIL NO. 06-1247 (DRD) Complaint for Damages Jury Demand

MOTION REQUESTING SANCTIONS UNDER RULE 11

TO THE HONORABLE COURT:

COME NOW, co-defendant José Rivera Cordero ("Rivera Cordero"), his spouse and their conjugal partnership constituted between them, though their undersigned attorney and pursuant to Rule 11 of the Federal Rules of Civil Procedure, respectfully state, aver and pray as follows:

1. On or around May 22, 2006, plaintiffs served the appearing co-defendants with the Amended

Complaint and a Request for Waiver of Service of Summons.

2. Via letter dated June 9, 2006, and pursuant to Rule 11 of the Federal Rules of Civil Procedure, plaintiffs' counsel was urged to voluntarily dismiss the claims against the appearing defendants before they were required to file a responsive pleading. See Exhibit 1.

3. Rule 11 provides, *inter alia*, that

> [b]y presenting to the Court...a pleading, written motion or other paper, an attorney or other unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose...; (2) the claims, defenses and other legal contentions are warranted by existing law... ; (3) the allegations and other legal contentions have evidentiary support....

Fed. R. Civ. P. 11(b).

4. The appearing defendants submit that plaintiff counsel's insistence on advocating claims

against them under the Fourteenth Amendment and 42 § USC 1983 is unwarranted by existing law and is, therefore, contrary to the mandate of Rule 11. Notwithstanding the fact that plaintiffs, and their counsel, have had plenty of opportunity to conduct a reasonable inquiry, their posture has forced the appearing defendants to incur in the legal expenses of preparing the pertinent Motion to Dismiss, as well as the present motion, resulting in additional costs and unnecessary delay. "It is now clear that the central purpose of Rule 11 is to deter baseless filings in the District Court and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990).

5. As required by Rule 11, a copy of this motion has been served on Plaintiff's counsel of record twenty-one (21) days before being filed with the Court. See Fed. R. civ. P. 11(c)(l)(A).

DISCUSSION

Plaintiffs Amended Complaint avers violations of plaintiff's rights covered by the Fourteenth Amendment of the United State Constitution and the 42 U.S.C. § 1983, which provides a cause of action for the deprivation "under color of law" of any rights.

Title 42 U.S.C. § 1983 provides in its relevant part as follows:

Every person who, **under color of *any* statute**, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Emphasis ours).

It is well-settled that a claim under § 1983 requires "state action." Fletcher v. Rhode Island Hospital

Trust Nat. Bank, 496 F. 2d 927, 929 (1st Cir. 1974) (citing Civil Right Cases, 109 U.S. 3; 3 S. Ct. 18; 27 L. Ed. 835 (1883). In this respect, the court is called upon to determine whether the government has been sufficiently involved in the challenged actions that it can be deemed responsible for the plaintiff's claimed injury. Yeo v. Town of Lexington, 131 F. 3d 241,248(1st Cir. 1997).[1] To address this issue at this stage is proper as

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[1] The "under color of law" requirement of § 1983 "has consistently been treated as the same thing as the 'state action' required under the Fourteenth Amendment," United States v. Price, 383 U.S. 787, 794 n. 7; 86 S. Ct. 1152, 1156-57 n. 7; 16 L. Ed. 2d 267 (1966). Indeed, the Supreme Court has reversed an appellate court which treated the two analyses as separate. Lugar v. Edmondson Oil Co., 457 U.S. 922, 924, 928, 929; 102 S.Ct. 2744,2746-47,2749,2749-50; 73 L. Ed. 2d 482(1982). The First Circuit has consistently treated the analysis as the same. See Barrios-Velázquez v. Asociación de Empleados, 84 F. 3d 487,490-491 (1st Cir. 1996).

questions of jurisdiction are ordinarily addressed first by the courts, and the presence of state action is a "jurisdictional requisite for a §1983 action." Polk County v. Dodson, 454 U.S. 312, 315, 102 S. Ct. 445, 448, 70 L. Ed. 2d 509 (1981) (Emphasis added).

Plaintiff's allegations raised against Rivera Cordero emerge from the Fourteenth Amendment of the Constitution and 42 U.S.C. § 1983. Since § 1983 does not reach private actions, the key issue before this Court is whether the alleged actions and/or omissions encompass an action which may be "fairly attributable to the State." Ponce v. Basketball Federation of the Com. of Puerto Rico, 760 F. 2d 375, 377 (1st Cir. 1985) (citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 937; 102 S. Ct

2744, 2754; 73 L. Ed. 2d (1982); Méndez v. Belton. 739 F.2d 15, 17 (1st Cir. 1984). This state action inquiry is "necessarily fact-bound," Lugar v. Edmondson Oil Co.,

457 U.S. at 939; 102 S. Ct. at 2755, for "[o]nly by sifting facts and weighing circumstances can the non-obvious involvement of the State in private conduct be attributed its significance." Burton v. Wilmington Parking Authority, 365 U.S. 715,722; 81 S.Ct. 856, 860; 6 L. Ed. 2d 45 (1961).

In addressing the "state action" inquiry, this Court must consider whether there was (1) an elaborate financial or regulatory nexus between Rivera Cordero and the government of Puerto Rico which compelled Rivera Cordero to act as he allegedly did; (2) an assumption by Rivera Cordero of a traditional public function; or, (3) a symbiotic relationship involving the sharing of profits. Ponce v. Basketball Federation of the Com. of Puerto Rico, 760 F. 2d. at 377; see also Blum v. Yaretsky, 4571 U.S. 991, 1004-1005; 102 S. Ct 2777, 2785-2786; 73 L. Ed. 2d 534(1982); Rendell-Baker v. Kohn, 457 U.S. 830; 102 S. Ct. 2764; 73 L. Ed. 2d. 418

(1982); Gerena v. Puerto Rico Legal Services, Inc., 697 F. 2d 447,449 (1st Cir. 1983).

While we will address these three approaches to the state action inquiry below in separate sections, it is important to understand that there has been no privation of any right, privilege or immunity by Rivera Cordero against plaintiff, neither through state action or otherwise. Rivera Cordero merely served as the private legal representative of a private individual who was a partner of the plaintiff and who eventually was compelled to vindicate rights in state court and prevailed. Far from deprivation, under color of law, in that context plaintiff was provided with full constitutional protections -- both procedural and substantive.

A. Nexus Analysis

Under the "nexus" analysis, a state "can be held responsible for a private decision only when it has

exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." Blum v. Yaretsky, 457 U.S. at 1004; 102 S. Ct. at 2785; Rendell-Baker v. Kohn, 457 U.S. at 840; 102 S. Ct. at 2771. The First Circuit further requires that:

> [T]he party seeking to establish that action of a private party violated the Constitution must be able to point to the specific act or actions of the government which in fact motivated the private action. Gerena v. Puerto Rico Legal Services, Inc., 697 F. 2d at 450.

Here there is no allegation, and even less is there evidence, that the government of Puerto Rico encouraged or affirmatively induced Rivera Cordero's alleged conduct. Nor is there an allegation or evidence of an interplay of financial support between the government of Puerto Rico and Rivera Cordero to support a finding of "state action".

As mentioned, Rivera Cordero merely served as the legal representative of a private individual who had been the former partner of the plaintiff and prevailed against him in court. In fact, if we go further, it is co-defendant Roberto Palou Bosh who actually prevailed against plaintiff in an attorney's fees award and in many ways, both Rivera Cordero and his client were passengers in that particular venture.

Far from their being state action, nor action under color of law, there was entirely private action in the context of a private lawsuit between private individuals represented by private attorneys that was heard in Commonwealth Court. The only nexus with any government entity arose from the fact that the disputes among the parties was heard by an instrument of the government - a court. Although lawyers may at times entertain the idyllic notion that they may have

substantial powers over courts and judges, this does not amount to "under color of law" nor "state action."

Thus, under the nexus analysis, there is no basis for finding of a "state action" to infer jurisdiction upon this Court.

B. Public Function Analysis

The U.S. Supreme Court discussed the "public function" analysis of state action in Rendell-Baker v. Kohn, 457 U.S. at 842; 102 S. Ct at 2772, stating as follows:

> [O]ur holdings have made clear that the relevant question is not simply whether a private group is serving a 'public function.' We have held that the question is whether the function performed has been 'traditionally the exclusive prerogative of the State.' (citations omitted); See also Ponce v. Basketball Federation of the Com. of Puerto Rico, 760 F. 2d at 381.

This is a heavy burden, as demonstrated by Rendell-Baker. where the Court concluded that although the education of maladjusted high school students is a public function for which the state

intended to provide services at public expense, that "legislative policy choice in no way [made those) services the exclusive province of the State." Moreover, the Rendell-Baker Court concluded that the fact that "a private entity performs a function which serves the public does not make its acts state action." Id. If providing education to deprived youths was not considered by the U.S. Supreme Court a traditional exclusive function of the state, id. then a fortiori, neither can an attorney's private practice be so considered. There is no indication in the complaint, even considering the facts in the light most favorable to the plaintiff, that there was any public (government) function in the facts that gave rise to the complaint. Hence, it would be an unsupportable assertion that Rivera Cordero has assumed a responsibility that is traditionally a public function reserved to the state.

C. Symbiotic Relationship Analysis

The U.S. Supreme Court addressed the symbiotic relationship analysis of state action in Burton v. Wilmington Parking Authority, 365 U.S. 715, 722; 81 S.Ct. 856, 860; 6 L. Ed. 2d 45 (1961). In Burton, the state leased public property to a private restaurant. As part of its analysis of the relationship between the government and the owner of the restaurant, the Court concluded that the actions of a private party are attributable to the state only if the government "has so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity...." Id. at 725, 81 S. Ct. at 862; Gerena v. Puerto Rico Legal Services, Inc., 697 F. 2d at 451, as cited in, Ponce v. Basketball Federation of The Comm. of Puerto Rico, 760 F. 2d. at 381. What was crucial in Burton was not merely the contract between the private party and the government

to lease property, but the fact that the restaurant "constituted a physically and financially integral...part of the State's plan to operate its project as [a] self-sustaining unit." Burton v. Wilmington Parking Authority, 365 U.S. at 723-4; 81 S. Ct. at 861. Not even remotely has a similar degree of interdependence been alleged in the case at hand.

In Rendell-Baker v. Kohn, 457 U.S. at 843; 102 S. Ct. at 2772, the Supreme Court expanded on the necessary elements for the presence of a symbiotic relationship. It held that the key factor in determining the existence of such a relationship is whether the state profits from the challenged activity. From the allegations of the Complaint, there is no hint that the state profits or did profit from the legal representation of Rivera Cordero that led to the current lawsuit. From the facts of the complaint, it is impossible to deduce or infer that Rivera Cordero has a relationship with the government

of Puerto Rico equivalent to a joint economic venture, or that the government obtains financial benefits from Rivera Cordero (income, property and unemployment taxes excluded). None of it smacks of being an action "under color of law" as would be required in order for there to be a symbiotic relationship.

Under all three recognized approaches to the state action inquiry, the allegations of the complaint are insufficient for this Court to conclude that the alleged actions of Rivera Cordero is "fairly attributable to the State." Lugar v. Edmonson Oil Co., 457 U.S. at 937, 102 S. Ct. at 2754. Accordingly, plaintiff's cause of action under 42 U.S.C. § 1983 should be dismissed.

Section 1983 of the Civil Rights Act affords redress against a person who, under color of state law, deprives another person of any federal constitutional or statutory right. Omni Behavioral Health v. Miller, 285 F.3d 646,650-51(8th Cir. 2002); see also Cruz-Erazo v.

Rivera-Montanez, 212 F.3d 617,621 (1st Cir. 2000). To establish a procedural due process claim under § 1983, plaintiffs must allege that: (1) they had a cognizable property interest as defined by state law; and, (2) that the defendants, acting under color of state law, deprived them of that property interest without constitutionally adequate process. See PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 30 (1st Cir.1991) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422,428; 102 S.Ct. 1148; 71 L.Ed.2d 265 (1982)); see also Romero-Barceló v. Hernández-Agosto, 75 F.3d 23, 32 (1st Cir.1996).

In the case Wasko v. Silverberg, 103 Fed. Appx. 332 (10th Citcuit) plaintiff brought a civil rights suit against his attorney, claiming that the alleged malpractice of his attorney in his age discrimination case against the state violated his due process and equal protection rights. The court of Appeals stated that "[a] violation of either the Fourteenth Amendment or §

1983 **requires wrongs committed by a state actor**. Regardless of the character of the particular rights asserted, if there is no state actor, there will be no federal cause of action." In Wasko, the Court of Appeals for the Tenth Circuit held that the attorney was not acting on behalf Of the state when he was representing the plaintiff.

In light of the particularities of this case and the relevant case law, there is no question that Rivera Cordero is merely a private actor for Fourteenth Amendment and § 1983 purposes.

CONCLUSION

The foregoing conclusively establishes the myriad pleading and substantive deficiencies that plague plaintiffs' Amended Complaint, deficiencies brought about by plaintiffs' counsel cavalier attitude towards the obligation imposed by Rule 11. The misguided format selected by plaintiffs to proceed with their claims, and

their failure to correct them when so advised, has extracted a heavy toll on defendants. Such conduct should not go unpunished.

Rule 11's purpose is to deter dilatory and abusive strategies in litigation and streamline the litigation process by decreasing frivolous pleading. See Cruz v. Savage, 896 F.2d 626, 630 (1st Cir. 1990). Subjective bad faith is not required. What the Court must consider is the nature of the attorney's prefiling inquiry and the factual basis of the pleading or paper under an objective standard of reasonableness under the circumstances. See Cooter & Gell v. Hartmarx Corp., 496 U. S. 384,399 (1990); Cruz, 896 F.2d at 631; Rodriguez v. Banco Central, 155 F.R.D. 403,405 (D.P.R. 1994). "Rule 11 allows sanctions if either (1) a pleading, motion or paper has been interposed for an improper purpose; or, (2) after reasonable investigation, a competent attorney could not form a reasonable belief that the pleading,

motion or paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." Rodriguez, 155 F.RD. at 405 (citing Lancellotti v. Fay, 909 F.2d 15, 19 (1st Cir. 1990)).

The previous discussion demonstrates how a minimal inquiry into the facts of the case and a cursory review of the applicable law would have revealed the frivolity of filing a claim under the Fourteenth Amendment and 42 USC §1983, long before forcing the appearing defendants to file a responsive pleading or a motion to dismiss. Rather than conducting the reasonable inquiry required by Rule 11, plaintiffs opted to insist upon the totality of their claims and force defendants to incur in the attorney's fees and costs necessary for filing a motion to dismiss.

Plaintiffs and their counsel should be expected to assess the merits of their claim before occupying the

Court's and the other party's time and resources. It is their responsibility to honestly examine the facts and the evidence at hand and to spare the legal system the expense of frivolous litigation. Failure to do so is sanctionable under Rule 11. The appearing defendants, accordingly, request that the Court sanction plaintiffs for their failure to conduct a reasonable prefiling inquiry and order them to pay the appearing defendants a reasonable sanction to compensate for plaintiff's violation of Rule 11 and its costs and attorney's fees incurred in preparing the present Motion and the related Motion to Dismiss.

WHEREFORE, the appearing defendants respectfully request that the Court sanction plaintiffs for their failure to conduct the reasonable pre-filing inquiry mandated by Rule 11, and order them to pay the appearing defendants a sanction to compensate for plaintiff's breach of Rule 11 and for the reasonable costs

and attorney's fees incurred in preparing the Present Motion under Rule 11 and the related Motion to Dismiss.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this _____ day of July, 2006.

I HEREBY CERTIFY that on this same date, we electronically filed the foregoing with the Clerk of the Court using the CMJECF system. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system: Iván Pagan Hernández, PO Box 8765, Carolina, Puerto Rico, 00988, Roberto Palou Bosch, Via Horizonte A-1, Urb, La Vista, San Juan, Puerto Rico 00924. Parties may access this filing through the Court's system.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, ETC. Plaintiffs, -vs- ROBERTO PALOU BOSH, etc. Defendants.	CIVIL NO. 06-1247 (DRD) CIVIL RIGHTS

MOTION FOR INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

Comes now Plaintiffs through the undersigned attorneys and respectfully alleges and pray:

1. That Plaintiff is suffering irreparable damages due to the fact that he was deprived of his property.

2. Without jurisdiction, the Judge disobey the stay order of the Bankruptcy Court.

3. Two Marshall expelled and lock him out from the Macelo La Muda, and illegal and anticonstitutional act.

4. They lacked jurisdiction due that Macelo La Muda is a Society that was not included in the case a quo.

5. They acted without jurisdiction because art. 1586 (1) Of the Civil Code of Puerto Rico give Plaintiff an absolute right to act as such administrator of the society.

6. They acted without jurisdiction because, in arguendo, the only legal procedure is prescribed in art. 1590 Of the Civil Code of Puerto Rico, the embargo of his quota in the society.

7. This case is very similar to Huminski v. Rutland County, D.VT. 2001, 148 F. Supp. 373, in that case Judges executing trespass notices prohibiting Plaintiff from entering any state Court grounds. Lock out is the same as lock in. The restriction of movement is the most valuable civil right.

WHEREFORE, respectfully we move the Court to set aside such order locking out Plaintiff from his property and refrain Defendants and the Judge from such restrain of movement and exercise of a legal right to be a partner and act as such administrator.

Carolina, Puerto Rico, June 16, 2006.

CERTIFIED : Notified defendants

s/IVAN PAGAN HERNANDEZ
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, et als Plaintiffs	CIVIL NO. 06-1247 (DRD)
-vs-	COMPLAINT FOR DAMAGES
ROBERTO PALOU BOSH, et als. Defendants	JURY DEMANDED

BRIEF IN OPPOSITION OF MOTION TO DISMISS

TO THE HONORABLE COURT:

Comes now the Plaintiff party in the above caption case through the undersigned attorneys and respectfully alleges and prays as follow:

1. The Defendant Palou filed pro se a motion to dismiss predicated in the doctrine of res judicata and the requirement of state action of section 1983, a wrongful construction of the Civil Rights Act. Although the Amended Complaint makes such arguments academic, we put straight forward our point of view:

2. NO RES JUDICATA:

In the case of Shillingford v. Holmes, 512 F. Supp. 656, it was said that State Courts may be utilized under federal statutes such as Code Section 1983 (1981). In the case at hand, Barreto Rosa, 393 F. Supp. 2d. 122 it was said on October 2005, that if Plaintiff do not include a cause of action pursuant to Section 1983 in the state action, res judicata is applicable. Such case established exceptions that are applicable to our case:

(1) At page 129 it said:

> "..entails certain exceptions. Amongst these exceptions, The Court have recognized that if the parties agree or a defendant implicitly assents to the splitting of a plaintiff's claims, a judgment in an earlier action which normally bar the subsecuent action will withstand disposition based on res judicata doctrine. Calderon Rosado, 805 F. 2d. 1087. The rationale is that a main purpose behind res judicata Is to protect a defendant from harassment of multiple actions.

A defendant who fails timely
to complain waives the benefit."

Secondly, Plaintiff in our case was the Defendant in the State Court, and therefore, implicitly assents to the splitting of claims.

Thirdly, the action in this case accrues from the moment he suffers damages and his property is taken by the way of embargos. He can not waive Section 1983 if it accrues later, after he is deprived of his property in a conspiracy of this two lawyers.

Defendant did not mentioned and avoid claim under Section 1988 and the case of Grendel's Den v. Larkin, 749 F. 2d. 945 that became part of the Fourteen Amendment and IIT Intermedia (97 JTS-1997) that abolished oral or quota litis. A lawyer is such authority and we amended our Complaint to included the judge, that it said in the cases quoted in the Amended Complaint, are no immune from constitutional infringements. Cf. Humminski v. Rutland County, 148

F. Supp. 2d. 373, Pierson v. Ray, Zarcone v. Perry. In our amended complaint, sections 1981, 1985 are applicable to private parties.

Belkans said about a symbiotic relation between private and public functionary. Essentially Civil Rights are human rights, individual rights and therefore, private rights. Protected not only from vertical gubernamental attacks but also from horizontal attacks. In the Civil Law tradition, that is the case of Puerto Rico, Civil Rights are considered "General Principles of Law", which stands above the Constitution. Look to a recent case from the United States Supreme Court that said that a private person can use "eminent domain" because a commercial center is a public purpose. Is a slaughter house such a public use?

WHEREFORE: such motion do not prosper, is academic and not conformable to law.

Carolina, Puerto Rico, May 22, 2006.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, ENRIQUE ROSARIO SOTO, YON C. ROSARIO KANG, JOSE ALFREDO ROSARIO SOTO, WALLESKA FEBUS SUAREZ MARIBEL ROSARIO SOTO, NESTOR ORTEGA LOPEZ, Plaintiffs, -vs- ROBERTO PALOU BOSH AND THE LEGAL SOCIETY WITH AMARILYS GONZALEZ DE JESUS, JOSE RIVERA CORDERO AND THE LEGAL SOCIETY WITH LOLA ROE, GEORGINA CANDAL SEGUROLA AND THE LEGAL SOCIETY WITH JOHN DOE, Defendants	CIVIL NO. 06-1247 (DRD) COMPLAINT FOR DAMAGES JURY DEMAND

AMENDED COMPLAINT

TO THE HONORABLE COURT:

Now comes the Plaintiffs through their undersigned attorneys and and respectfully alleges and prays as follow:

1. This is an action for injunctive relief and for monetary damages for violations of the constitutional rights of the Plaintiffs, by taken their properties like a condemnation, under color of a legal fee, asking an oral quota litis, by two lawyers acting in a conspiracy, depriving Plaintiffs of their property and denying the equal protection of law.

JURISDICTION

2(a) This action is brought pursuant to 42 USC. Sections 1981 (contract discrimination: 1.8 millions oral quota litis) 1983 (property deprivation) 1985 (conspiracy) and 1988(fees) of the Civil Rights Act, Civil Rights Attorneys' Fee of 1976, the FOURTEEN AMENDMENT, the Fifth Amendment of United States Constitution and the doctrines in the following cases:

GRENDEL DEN v. LARKIN, 749 F. 2d. 945 (1 Cir. 1984); Hanralan v. Hampton, 446 US 754; BLUNV. STENSON, 465 US 465; HENSLEY V. ECHERHART 461 US 424; BLANCHARD V. BERGERON, 489 US 87; CITY OF RIVERDALE V. RIVERA, 477 US 561; doctrine established locally: LOPEZ VICIL v. ITT 1NTERMEDIA INC. 97 JTS 104; IN RE CRIADO VAZQUEZ, 2001 ITS 157; IN RE BARLUCEA CORDOVES, 2001 JTS 144; IN RE CONCEPCION PENA, 2001 JTS 97.

2(b)-This Honorable Court also has subject matter jurisdiction over the present actions pursuant to 28 USC secs.1331 and 1334. The action is filed in the US District Court pursuant to 28 USC Sec.157 (a)and (b) (5).

2 ©-Plaintiff is currently the Debtor in possession in 06-01234 (ESL) reorganization proceeding, before the Bankruptcy Court for the District of Puerto Rico.

2 (d)-The District court of Puerto Rico is the proper venue for filing of the present complaint under 28 USC sec. 1391 (b).

2 (e) The court's ancillary jurisdiction is invoked to redress for the violations of the constitution of The Commonwealth of Puerto Rico and statutes, as said violations arise from the same nucleous of operative facts as the federal claims.

2 (f)- Supplement jurisdiction over state law claims is invoker under 28 USC sec. 1367. The supplement jurisdiction is held under articles 1802 and 1803 of the Civil Code of Puerto Rico, 31 LPRA sec. 1541 and 1542 and under the Civil Rights Act of Puerto Rico, 1 LPRA13.

PARTIES

2. Plaintiff, Enrique Rosario Robles, is a partner in a business known as Macelo La Muda, a slaughter house with site in route No. 1, intersection with the old route to Guaynabo.

3. Enrique Rosario Soto, Jose Alfredo Rosario Soto, and Maribel Rosario Soto are his son and daughter.

4. Yon C. Rosario Kang is the wife of Enrique Rosario Soto; Waleska Febus Suarez is the wife of Jose Alfredo Rosario Soto; and Nestor Ortega Lopez is the husband of Maribel Rosario Soto.

5. Defendant, Roberto Palou Bosch is the attorney trying to keep the business for himself and his wife Amarilys Gonzalez de Jesus, under color of 1.8 millions verbal quota litis.

6. Jose Rivera Cordero, is the other attorney that conspired to take over the business for himself and his wife Lola Roe. He represented the other partner, Jose Morales.

8. Georgina Candal Segurola is the judge and John Doe, her husband in the legal society. She encroached the property rights of the Plaintiff, granting

an oral quota litis of 1.8 millions, permitting a reconstruction of a record of hours to make a comparison(quota litis was abolished in PR in the case of ITT Intermedia); denying bailment with the same property; pushing him to the Bankruptcy Court; trying to put him behind bar in a contempt procedure against the constitutional prohibition for debts; disobeying the stay order of the Bankruptcy Court, locking him out of business; executing accounts of persons not parties in the case; YON C. ROSARIO KANG, WALLESKA FEBUS SUAREZ AND NESTOR ORTEGA LOPEZ. The following cases established that judges are not absolutely immune if they violates constitutional rights: Humski v. Ruthland County, 148 F. Supp. 2d. 373 (2001), Pierson v. Ray, 386 US 547 (1967), Zarcone v. Perry, 438 F. Supp. 788 (1977).

FACTUAL ALLEGATIONS

1. The Macelo La Muda was a society of three: Plaintiff Enrique Rosario Robles, Jorge Morales and Lozada, that was reduced to the former two by a judgment of division. Lozada pass away.

2. Plaintiff Enrique Rosario Robles was represented by Defendant Roberto Palou Bosh and the other partner, Jorge Morales, by attorney Rivera Mercado, that pass away and his son Jose Rivera Cordero assumed his representation.

3. The two above mentioned attorney conceived a plan and conspired to take over the Plaintiff business, as was manifested to him: "the Lozada part is mine," said Palou. They planned taken money from the business gains, Palou more than $110,000.00. Although Palou was disbar for 6 months, he continue in the case, and against the norm in Grendel's Den, supra, that request for attorney's fee should not result in a second

major litigation, filed a suit to collect seven millions quota litis, reduced to 1.8 millions.

4. Defendant Jose Mercado Cordero, conspired with him, did nothing to represent his client in a suit for collection of fee that in the long run will affect the whole society. He denied nor remember his fee to Morales, although the judgment said 1.5 millions, grossly and profoundly ripping plaintiff from his property.

CLAIM FOR RELIEF

1. Pursuant to the Act of Congress that permit a Federal Court to stay any proceeding, to order defendants to refrain from collecting in any form or judicial process such an illegal fee, i.e a quota litis 1.8 millions- a violation of property rights per se (14 th amendment).

2. ACTUAL DAMAGES:

2.1- Two millions to Enrique Rosarlo Robles.

2.2- 1/3 million to Enrique Rosario Soto.

2.3- 1/3 million to Jose Alfredo Rosario Soto.

2.4- 1/3 million to Maribel Rosario Soto.

2.5- A hundred thousand dollars to Yon Rosario Kang.

2.6- A hundred thousand dollars to Waleska Febus Suarez.

2.7- A hundred thousand dollars to Nestor Ortega, all for the embargo of their accounts without due cause.

2.8- Eight millions dollars as punitive damages for violations of constitutional rights.

2.9- Solidarity of the defendants for such amounts.

3. Any other relief the Court deems equitable and just.

4. Jury trial is demanded.

5. No jurisdictional amount is required under the Civil Right Act, Cf. Douglas v. City of Jeannette, 319 US 157.

6. Sections 1981, 1985 are applicable to private parties. Cf Collin v. Hardyman, 341 US 157, Am. Jur. Trial vol. 15, pag. 578.

At Carolina, Puerto Rico, May 10, 2006.

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JURISDICTION & VENUE

2A. This Honorable Court also has subject matter jurisdiction over the present actions pursuant to 28 USC §§ 1331 and 1334. The action is filed in the US District Court pursuant to 28 USC §157 (a) and (b) (5).

2B. Plaintiff is currently the Debtor in Possession in Case No. 06-01234 (ESL), Reorganization proceeding, before the Bankruptcy Court for the District of Puerto Rico.

2C. The District of Puerto Rico is the proper venue for the filing of the present complaint under 28 USC § 1391(b).

2D. The Court's ancillary jurisdiction is invoked to redress for the violations of the constitution of the Commonwealth of Puerto Rico and statutes, as said violations arise from the same nucleus of operative facts as the federal claims.

2E Supplemental Jurisdiction over state law claims is invoked under 28 USC §1367. The supplemental jurisdiction is held under Articles 1802 and 1803 of the Civil Code of Puerto Rico, 31 LPRA §5141 and 5142 and under the Civil Rights Law of Puerto Rico, Law 12 of 1975. (LPRA ____)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, Plaintiff, -vs- ROBERTO PALOU BOSH, ET ALS. Defendants	CIVIL NO. 06-1247 (DRD)

MOTION TO AMEND COMPLAINT
AND FOR EXTENTION OF TIME

TO THE HONORABLE COURT:

Comes now the Plaintiff through his undersigned attorneys and respectfully alleges and pray as follow:

1. Plaintiff moves this Honorable Court for an extention of time, 30 Days, to bring additional parties for the Plaintiff.

2. Also, Plaintiff needs to bring additional parties as Defendants in this case.

3. Request respectfully material time to answer to any motion to dismiss from the defendant party after the Amended Complaint is filed.

WHEREFORE, Plaintiff moves this Court to allowed such Amended Complaint and the extension of time.

Carolina, Puerto Rico, April 12, 2006.

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s/CARLOS RODRIGUEZ QUESADA
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES PLAINTIFF V. ROBERTO PALOU BOSH, THE LEGAL SOCIETY OF COMMUNITY PROPERTY WITH AMARILYS GONZALEZ DE JESUS DEFENDANT	CIVIL NO. 06-1247 (DRD)

MOTION TO ENTER APPEARANCE, PERMIT CONVENTIONAL FILING OF DOCUMENTS AND REQUEST FOR ENLARGEMENT OF TIME TO ANSWER COMPLAINT OR OTHERWISE PLEAD

TO THE HONORABLE COURT:

Comes now defendant, Roberto Palou Bosch et al., appearing herein Pro Se, and, without submitting to the jurisdiction of this Court, very respectfully states and prays:

1. The undersigned attorney appears herein, Pro Se, representing himself without an attorney, since he is not an attorney admitted to practice before a federal district court.

2. On March 13, 2006, the Summons and Complaint was served at the residence of the Defendant. Pursuant to Rule 12(a)(1) of the Federal Rules of Civil Procedure, an answer to complaint is due within 20 days after service of the summons and complaint on the defendant. The last day of this period runs until the end of Monday, April 3, 2006, since it falls on a Sunday. FRCP 6(a).

3. The appearing defendant is in the process of contracting an attorney to represent him in this action. In addition, the appearing defendant is in the process of conducting the factual and legal investigation of the allegations of the complaint, but it has not been concluded.

4. Accordingly, the appearing defendant requests from this Honorable Court an additional thirty (30) days, that is until May 3, 2006, to file its answer to the complaint or otherwise plead.

5. Since the defendant is appearing Pro-Se and is not an attorney admitted to practice at the federal district court, the defendant requests authorization to conventionally file this and other documents as an exemption for electronic filing.

WHEREFORE, the appearing defendant very respectfully prays from this Honorable Court that the undersigned party be allowed to appear at this moment on its behalf, Pro Se, on all further proceedings in the instant action, authorize conventional filing, and that this Honorable Court grant it an extension of thirty (30) days, that is until May 3, 2006 to answer the complaint or otherwise respond.

I HEREBY CERTIFY that on this same date a copy of this document was sent via regular mail to Iván Pagán Hernández, Esq., P.O. Box 8765, Carolina, PR 00988.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3RD day of April, 2006.

s/ROBERTO PALOU BOSCH
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES PLAINTIFF V. ROBERTO PALOU BOSH, THE LEGAL SOCIETY OF COMMUNITY PROPERTY WITH AMARILYS GONZALES DE JESUS DEFENDANT	CIVIL NO. 06-1247 (DRD)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND/OR LACK OF JURISDICTION

TO THE HONORABLE COURT:

Comes now defendant, Roberto Palou Bosch et al., appearing herein Pro Se, and, without submitting to the jurisdiction of this Court, very respectfully states and prays:

1. Under separate motion filed today April 3,

2006, the appearing defendant filed a "Motion to Enter Appearance, Permit Conventional Filing of Documents and Request for Enlargement of Time to Answer Complaint or Otherwise Plead". As indicated in the referred motion, the undersigned attorney appears herein, Pro Se, representing himself without an attorney, since he is not an attorney admitted to practice before a federal district court.

2. After reviewing the plaintiff's Complaint and noticing the clear and obvious failure of the Complaint to state a claim upon which relief can be granted, and lack of subject matter jurisdiction, the defendant files this motion to dismiss. It is beyond doubt that the plaintiff can prove no set of facts to support his claim that would entitle him to relief and dismissal of the Complaint is proper in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure.

3. The Complaint states that it is brought pursuant to 42 USC Sec. 1983, Sec. 1988 of the Civil Rights Act and the Fourteenth and Fifth Amendments of the United States.

4. As indicated by this Court in Nuñez-Nuñez v. Sánchez-Ramos, 2006 U.S. Dist. LEXIS 10896 (decided on February 28, 2006):

> "Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may, in response to an initial pleading, file a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. ... A complaint must set forth 'factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable theory.' [citations omitted] ... the Court is not obligated to accept plaintiffs 'bald assertions, unsupportable conclusions, periphrastic circumlocations, and the like.' Aulson v. Banchard, 83 F.3d 1, 3 (1st Cir. 1996). The Court must only accept those facts that are 'well pleaded,' limiting its inquiry into the allegation of the complaint."

5. The present complaint is filled with "bald assertions, unsupportable conclusions, periphrastic circumlocations, and the like". Dismissal of the

Complaint is justified since the plaintiff cannot prevail under any possible theory even if this Court were to accept the "well pleaded" factual allegations in the Complaint, of which it absolutely lacks.

6. Plaintiff makes the bald and erroneous assertion that his constitutional rights have been violated and purports to bring this action under 42 USC Section 1983, specifically alleging that his property has been taken "under color of a verbally or oral quota litis." This is a frivolous and unfounded allegation. The plaintiff clearly does not set forth the material elements necessary to sustain an action under 42 USC Section 1983, in particular evidence that defendant acted 'under color of state law'.

7. As indicated by the U.S. Court of Appeals for the First Circuit in Estades-Negroni v. CPC Hospital San Juan Capestrano, 412 F.3d 1 (1st Cir. 2005):

"Section 193" provides a remedy for deprivations of rights secured by the Constitution and laws of the

United States when that deprivation takes place **'under color of any statute, ordinance, regulation, custom, or usage, of any State...'** Lugar v. Edmondson Oil Co., 457 U.S. 922, 924,73 L.Ed. 2d 482, 102 S.Ct. 2744 (1982) (quoting Sec. 1983). Therefore, a plaintiff claiming a Sec. 1983 violation must allege that a person or persons acting under color of state law deprived him of a federal constitutional or statutory right. See Rockwell, 26 F. 3d at 256. **If the plaintiff fails to allege facts sufficient to establish either the deprivation of a federal right or that the defendant or defendants acted under color of state law, then the Section 1983 claim is subject to dismissal."** (our emphasis).

Further, as affirmed by said Court of Appeals in Miranda Otero v. Commonwealth of Puerto Rico Industrial Commission, 2006 U.S. App. LEXIS 7100 (Decided on March 22, 2006):

"It is true ... that there are no elevated pleading standards for civil rights cases. See Educadores Puertorriqueñoss en Acción v. Hemández, 367 F.3d 61, 66-67 (1st Cir. 2004). However, that does not mean there are no standards. **'Plaintiffs are obligated to set forth in their complaint 'factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable legal theory**. Platten, 437 F.3d at 127 (quoting Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988); See also Educadores, 367 F.3d at 68 ('In a civil rights action as in any other action subject to notice pleading standards, **the complaint should at least set forth**

minimal facts as to who did what to whom, when, where, and why ...')." (our emphasis).

8. This is a frivolous law suit filed by the plaintiff as an attempt to relitigate a matter concerning the defendant's right to legal fees, a matter that was previously adjudicated in favor of the defendant by the Puerto Rico Court of Appeals at KLAN 200401066 and confirmed by the Puerto Rico Supreme Court at AC-2005-45. As indicated by this District Court in Barreto Rosa v. Varona-Mendez, 393 F. Supp. 2d 122 (D.C.P.R. 2005) in discussing the doctrines of res judicata and collateral estoppel, and equally applicable in the case at bar, "... even when the cause of action in state court did not include a cause of action pursuant to Section 1983, plaintiff could have very well included said federal cause of action in those proceedings" The origin of plaintiffs claim is unquestionably the same in both cases: a matter of the defendant's right to legal fees.

9. This action constitutes a reprehensible attempt by the plaintiff to have this court provide the plaintiff with relief that he was not otherwise able to obtain from the Puerto Rico courts, by alleging unsupportable constitutional violations of a deprivation of property "under color of a verbally or oral quota litis" or "so color of a legal oral fee".

10. In this case, there is no need to engage in an analysis of the application of the doctrines of res judicata and collateral estoppel or for that matter whether the instant case is also barred under the Rooker-Feldman doctrine (see footnote 8 in Nuñez-Nuñez v. Sánchez-Ramos, supra), since the case is dismissable pursuant to Rule 12(b)(6) of the Rules of Civil Procedure. The defendant reserves the right to raise this defense in the future, if necessary. At the threshold, the plaintiff has not established section 1983's "under color of state law" requisite in this case.

11. As affirmed by this District Court in Castro Rivera v. Fernando Fagundo, 310 F. Supp. 2d 428 (U.S.D.C. 2004), "in order to prevail in a Section 1983 claim plaintiff must bring forth evidence that (1) defendant acted 'under color of state law' and (2) deprivation of a federally protected right." [citiations omitted].

12. In the present action, the plaintiff utterly fails to bring forth evidence that defendant acted "under color of state law". In the Complaint, there is no evidence that the defendant acted within the scope of any duties as a state official or that the defendant's conduct can be attributed to the state for Section 1983 purposes. There is nothing in the Complaint to fairly characterize the defendant as a state actor. Invoking unsubstantial allegations that defendant acted "under color of a verbally or oral quota litis" or "so color of a legal oral fee" simply does not suffice. With the

dismissal of plaintiff's underlying Section 1983 claim, this Court has authority to dismiss the Section 1988 claim. See Estades-Negroni v. CPC Hospital San Juan Capestrano, supra. Moreover, the alleged violations of constitutions rights are frivolous and unsubstantial, there is no diversity of citizenship and none has been alleged or established; and, as such, this action should be dismissed for lack of jurisdiction over the subject matter.

WHEREFORE, the defendant respectfully moves this Honorable Court to dismiss the plaintiff's action because the Complaint fails to state a claim against the defendant upon which relief can be granted and/or for want of jurisdiction over the subject matter. In addition, it is respectfully requested that this Court provide any additional relief that the Court determines is justified, including the imposition of sanctions against the plaintiff for instituting this frivolous action.

I HEREBY CERTIFY that on this same date a copy of this document was sent via regular mail to Ivan Pagan Hernández, Esq., P.O. Box 8765, Carolina, PR 00988.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3RD day of April 2006.

s/ROBERTO PALOU BOSCH
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, Plaintiff, -vs- ROBERTO PALOU BOSH, THE LEGAL SOCIETY OF COMMUNITY PROPERTY WITH AMARILYS GONZALEZ DE JESUS, Defendants	CIVIL NO. 06-1247 (DRD)

COMPLAINT

TO THE HONORABLE COURT:

Comes now the Plaintiff through his undersigned attorney and respectfully files this complaint, alleging and claiming as follows:

1. This is an action for injunctive relief and for monetary damages for violations of the constitutional rights of Plaintiff, by taking

one third of his property under color of a verbally or oral quota litis.

JURISDICTION

2. This action is brought pursuant to 42 USC Sec. 1983. Sec. 1988 of the Civil Rights Act, "Civil Rights Attorneys' Fee Act of 1976; the Fourteenth and Fifth amendments of the United States Constitution and the doctrines in Grendel Den v. Larkin, 749 F. 2d. 945 (1st Circuit 1984), Hanralan v. Hampton, 446 US 754, Blum v. Stenson 465 US 465, Hensley v. Echerhart 461 US 424, Blanchard v. Bergeron, 489 US 87, City of Riverside v. Rivera, 477 US 561.

PARTIES

3. Plaintiff, Enrique Rosario Robles, is a partner in a business known as Macelo La Muda, a

slaughter house, with site in route no. 1, intersection with the old route to Guaynabo.

4. Defendants are an attorney and his wife, who his only work was a suit against the third partner and wants to collect a third of all plaintiff's property so color of a legal oral fee.

FACTUAL ALLEGATIONS

5. Without a written contract, alleging an oral fee, with a buildup of records of hours (not contemporaneous) Defendant is taking one third of all Plaintiff's properties, amount that surpasses 1.7 million dollars

6. Defendant took $110,000 from the business gains, continued in the case although he was disbarred for six months, admit he collects 33 % in all cases and embargo all his properties making true his saying that he is a "substitute of the

third partner" in the business and have a right to one third of all the properties.

CLAIM FOR RELIEF

WHEREFORE, the Plaintiff claims the following:

1. Pursuant to the Act of Congress that permits a Federal Court to stay any proceeding, i.e. 42 USC Sec. 1983, to order Defendant to refrain from collecting in any form or judicial process such illegal fee

2. Actual damages in the amount of two million dollars.

3. Punitive damages in the amount of eight million dollars.

4. Cost of this action as well as a reasonable attorneysfees.

5. Any other relief the Court deems equitable and just.

6. Jury trial is hereby demanded.

In Carolina, Puerto Rico, March 6, 2006.

s/IVAN PAGAN HERNANDEZ
ATTORNEY FOR PLAINTIFF
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Enrique Rosario-Robles Plaintiffs, Appellant -v- Roberto Palou-Bosh, Et Al. Defendants, Appellees	CASE NO. 06-2529

SUPPLEMENTARY MOTION

TO THE HONORABLE COURT:

Now comes the Appellant in the above captioned case and respectfully alleges and prays:

1. That the case quoted by us were it was decided that 42 USC. Sec. 1983 is applicable to judges that violate

civil rights is: Huminski v. Rutland County, DU. 2001, 18 F. Supp. 2d 373

2. General principles of law are above the Constitution. The Civil Code of PR states that:

Art. 1227- "Contracts without a cause or with an illicit one have no effect whatsoever."

3. The case of Grendel Den v. Larkin 749 F. 2d 945 and ITT Intermedia (1977) makes such contract illegal and therefore, without a cause.

4. We would like to formulate the following question: **Where** in the world can a young lawyer take his client entire property and kick him out of it?

Respectfully submitted, Carolina, P.R. June 22, 2007

Certify: N/W/C. Attorneys in record.

s/IVAN PAGAN HERNANDEZ
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Enrique Rosario-Robles Plaintiff, Apellant -v- Roberto Palou-Bosh, Et Al. Defendants, Appellees	CIVIL NO. 06-1247 (DRD) MOTION TO SET ASIDE JUDGMENT

MOTION TO SET ASIDE JUDGEMENT

TO THE HONORABLE COURT:

Now comes the Appellants in the above captioned case and respectfully alleges and prays:

1. A recent case established that if the judge violates civil rights, suit can be brought under Sec. 1983. As was quoted by us: Huminski v. Rutland County, DU. 2001

2. Sec. 1985 was invoked and construction makes it applicable to private parties.

3. They took appellant's property and locked him out; the judge disobeyed the order of stay from the

Bankruptcy Court.

4. The amount of 1.8 millions for 13 ½ years of trial is unbelievable. Palou said "that the 1/3 portion of the third partner was his". Later was disbarred, nevertheless he continued in the case and even so reconstructed a record of hours not contemporaneous to the collection procedure, a fraud.

5. The action on 42 USC. is different, it is not barred because the state action was a collection case.

6. It is discrimination by itself; because *quota litis* was abolished and the judge compared *quota litis* with a reconstructed record of hours. Violation of the ethical code is discrimination per se.

7. Two lawyers charging 1.8 millions each is taking of property, as they were both splitting the income between them.

WHEREFORE, we move the Court to set aside such judgment and order the continuation of trial.

Certify: notify Attorneys.

s/IVAN PAGAN HERNANDEZ
ATTORNEY FOR PLAINTIFF
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TEL/FAX (787) 768-8652

United States Court of Appeals
For the First Circuit

No. 06-2529

ENRIQUE ROSARIO-ROBLES,
Plaintiff, Appellant,
v.

ROBERTO PALOU-BOSH, ET AL.,
Defendants, Appellees.

Before

Boudin, Chief Judge,
Campbell, Senior Circuit Judge
And Lynch, Circuit Judge

JUDGMENT

Entered: May 24, 2007

Plaintiffs-appellants appeal from the district court's dismissal of their Amended Complaint. "Our review of a dismissal for either failure to state a claim or lack of subject matter jurisdiction (so long as made without fact finding) is de novo. We are not limited by the district court's reasoning, and we 'may affirm an order of dismissal on any basis made apparent by the record.' " Universal Communication Sys., Inc. v. Lycos, Inc. 478 F.3d 413, 418 (1st Cir. 2007).

We agree with the district court that the claims against the attorney defendants failed to state a claim under 42 U.S.C. § 1983 or 1985. Plaintiffs-Appellants' contention on appeal that the attorneys, as "officers of the court" were state actors for purposes of § 1983, is an argument that has specifically been rejected by the Supreme Court. See Polk County v. Dodson, 454 U.S. 312, 318 (1981). Having failed to allege that the attorney defendants conspired against Rosario-Robles because of his membership in a group defined by race, class or any other "invidious" criteria, the Amended Complaint failed to state a claim under § 1985(3). See Diva's, Inc. v. City of Bangor, 411 F.3d 30, 38 (1st Cir. 2005) (citations omitted).

We also agree that the claims against the Honorable Georgina Candal-Segurola are barred by the doctrine of judicial immunity. "Except where judges act completely without jurisdiction, they are protected from liability under section 1983 by the well-established doctrine of judicial immunity." Slotnick v. Garfinkle, 632 F.2d 163, 166 (1st Cir. 1980). The Amended Complaint does not "seriously question the jurisdiction of any of the defendants to have initiated the action[ ]"out of which these claims arise. Id. at 166 n. 1. Plaintiffs complain only of actions taken by Judge Candal-Segurola within her judicial jurisdiction. "[Judicial] immunity applies even when the judge is accused of acting maliciously and corruptly." Pierson v. Ray, 386 U.S. 547, 554 (1967).

Finally, to the extent that the Amended Complaint explicitly or implicitly seeks review and rejection of judgments entered by Judge Candal-Segurola in Puerto Rico court proceedings, it is barred by the *Rooker-*

Feldman doctrine. See Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico, 410 F.3d 17, 24 (1st Cir. 2005). That doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

The district court judgment dismissing this case with prejudice is affirmed.

By the Court:
Richard Cushing Donovan, Clerk.

s/MARGARET CARTER
By:_____
Chief Deputy Clerk.

[cc: Gregory T. Usera, Esq., Enrique Rosario Robles, Esq., Roberto Palou Bosch, Rosa B. Perez, Esq.]

MANDATE

United States Court of Appeals
For the First Circuit

No. 06-2529

ENRIQUE ROSARIO-ROBLES,
Plaintiff, Appellant,
v.

ROBERTO PALOU-BOSH, ET AL.,
Defendants, Appellees.

Before

Boudin, Chief Judge,
Campbell, Senior Circuit Judge
And Lynch, Circuit Judge

JUDGMENT

Entered: May 24, 2007

Plaintiffs-appellants appeal from the district court's dismissal of their Amended Complaint. "Our review of a dismissal for either failure to state a claim or lack of subject matter jurisdiction (so long as made without fact finding) is de novo. We are not limited by the district court's reasoning, and we 'may affirm an order of dismissal on any basis made apparent by the record.'" Universal Communication Sys., Inc. v. Lycos, Inc. 478 F.3d 413, 418 (1st Cir. 2007).

We agree with the district court that the claims against the attorney defendants failed to state a claim under 42 U.S.C. § 1983 or 1985. Plaintiffs-Appellants' contention on appeal that the attorneys, as "officers of the court" were state actors for purposes of § 1983, is an argument that has specifically been rejected by the Supreme Court. See Polk County v. Dodson, 454 U.S. 312, 318 (1981). Having failed to allege that the attorney defendants conspired against Rosario-Robles because of his membership in a group defined by race, class or any other "invidious" criteria, the Amended Complaint failed to state a claim under § 1985(3). See Diva's, Inc. v. City of Bangor, 411 F.3d 30, 38 (1st Cir. 2005) (citations omitted).

We also agree that the claims against the Honorable Georgina Candal-Segurola are barred by the doctrine of judicial immunity. "Except where judges act completely without jurisdiction, they are protected from liability under section 1983 by the well-established doctrine of judicial immunity." Slotnick v. Garfinkle, 632 F.2d 163, 166 (1st Cir. 1980). The Amended Complaint does not "seriously question the jurisdiction of any of the defendants to have initiated the action[ ]"out of which these claims arise. Id. at 166 n. 1. Plaintiffs complain only of actions taken by Judge Candal-Segurola within her judicial jurisdiction. "[Judicial] immunity applies even when the judge is accused of acting maliciously and corruptly." Pierson v. Ray, 386 U.S. 547, 554 (1967).

Finally, to the extent that the Amended Complaint explicitly or implicitly seeks review and rejection of judgments entered by Judge Candal-Segurola in Puerto Rico court proceedings, it is barred by the *Rooker-*

Feldman doctrine. See Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico, 410 F.3d 17, 24 (1st Cir. 2005). That doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

The district court judgment dismissing this case with prejudice is affirmed.

By the Court:
Richard Cushing Donovan, Clerk.

s/MARGARET CARTER
By:_____
Chief Deputy Clerk.

Certified and issued as Mandate
Under Fed. R. App. P. 41.

s/Richard Cushing Donovan, Clerk

_____
Deputy Clerk

Date 7/2/07

[cc: Gregory T. Usera, Esq., Enrique Rosario Robles, Esq., Roberto Palou Bosch, Rosa B. Perez, Esq.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLE, Appellant-Plaintiff -v- ROBERTO PALOU BOSHC, ETC. Appellees-Defendants	NO. 06-1247

BRIEF OF THE APPELLANT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ENRIQUE ROSARIO ROBLES, Appellant-Plaintiff -vs- ROBERTO PALOU BOSH, ET ALS. Appellees – Defendants	NO. 06-1247

BRIEF OF THE APPELLANT

TO THE HONORABLE COURT:

Comes now the Plaintiff by his own right and respectfully alleges and prays:

1. INTRODUCTION

The term "Civil Rights" was first used in the Napoleonic Civil code of 1804. Said code was so ahead of its time that it protected the civil rights of non-citizens. In it, Article 7 reads:

> "L'exercice des droits civils
> est independent de la qualité
> of citoyen."

This translates to "The exercise of Civil rights is independent of the condition of the citizen." The basic fundamental Civil rights are life, liberty, property and the resistance to oppression. In English and American history, the concept of "due process" was developed to protect those fundamental vertical rights. "Due process of law" was defined as "anything that shocks the conscience."

Francisco de Vitoria, from Salamanca University, was the first to formulate a doctrine concerning natural rights in 1539. John Locke did it as well in 1789. In Article 7 of the French "Declaration of Man's Rights," also in 1789, it reads "those rights are the purpose of any political association."

With the globalization of Human Rights and the Declaration of Universal Rights of the ONU in 1948, Puerto Rico adopted the same in its Constitution. The Civil Rights Act (42 USC) became part of this

dollars and falsely constructed a lodestar of 11,830 non-contemporaneous hours. He disregarded the precedent set in the case of Den v. Lakin (749 F. 2d. 945) as well as the state leading case of ITT Intermedia 1967 that abolished the *quota litis* and adopted the lodestar of hours of the Federal Court. In addition, he cheated the statute of fraud that eliminated oral evidence because it mislead the jury.

He claimed that he was entitled to a *quota litis* because he performed the standard tasks of a lawyer and official of the Court, ultimately eliminating a third partner, Hiram Lozada from a society of three in the business of Macelo La Muda. He claimed this while working as officer of the court and, therefore, is liable under Sec. 1983.

A simple mathematical exercise proves his fraud and perjury to the Court:

1. He built up a record of 11,830 non-contemporaneous hours.

2. He, a young lawyer, charged $150.00 per hour. That fee multiplied by the lodestar of 11,830 hours only gives him the right to collect the sum of $1,777.950.00. Alas!

3. If you attribute the same amount of work hours to professor Rivera Mercado, who was representing the second partner, Jorge Morales, you arrive at the astonishing amount of 23,660 hours. (11,830 plus 11,830 for both parts) That number divided by 6 to represent day work in the Court from 9:00 a.m. to 5:00 pm, with an interval of 2 hours, gives you the sum of 3,943,33 days of work in the case. That number must be divided again by 365 to represent the days in a year to give you the total of 10.8 years of work on the case, day by day. Excluding weekends from the equation (104 days per year) you arrive at 1,101.97 additional days.

Divide that by 365, and it add 3 additional years; ultimately arriving at 13.8 years of labor days.

4. From such manipulation, he entered into a paradox by claiming the lodestar of hours to be comparative with *quota litis* and, further, to claim that the amount is the same, entitling him to the *quota litis*, discarding the lodestar, and therefore, without a case.

5. The consequence of not having a lodestar records contemporaneous is to disallow the claim. It is the same in Civil law. The Spanish legal authority said so:

> "The one who is guilty of illicitness lacks all rights and action..

NEMO AUDITUR SUAM TURPITUDINEM ALEGANS.

The unclean hands doctrine. Cf. 'FUNDAMENTOS DE DERECHO CIVIL' Puig Brutau, pag.321 tomo II-Contracts.

SECTION 1985-CONSPIRACY

Both lawyers, Roberto Palou and Rivera Cordero, under the guise that the other partner Jorge Morales should have received part in the gains from the Macelo La Muda, drew a schema to remove the appellant from his property. Rivera Cordero limited his declaration, saying that he did not believe to take fees from the gains of the business. According to the judgment, he collected one and a half millions. Appellant is the industrial partner.

Is clear that this section applies to private parties. See Am. Jur. Trial, Vol. 15 pag. 578. Civil rights are private rights and are not confined only to governmental officials, although lawyers are such officials.

THIRD ERROR: Judges absolute immunity?

It is clear in the cases that follow that judges are liable for any criminal behavior:

Pierson v. Ray, 386 US 547
Zarcone v. Perry, 438 F. Supp. 788

In the case Huminski v. Ruthland County, D.V. (recent 2001), 148 F. Supp. 2d. 373, it was well established that a judge is liable if he or she is in violation of an individual's civil rights.

The Department of Justice from Puerto Rico defense of Georgina Candal Segurola is quoted saying:

> "[That] it is better to leave unredressed the wrong by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation (p.7). Alas!

1. Judge Candal didn't even pick up a pencil to check on the obvious impossibility of the claimed 11,830 lodestar of hours, something clear at first glance.

2. Judge Candal permitted the appellee to have an interest in appellant's property, leaving him to appraise his property, gains in the business and even the good will.

3. Judge Candal discarded the doctrine of Grendel's Den and ITT Intermedia, and deemed the lodestar comparable to a *quota litis* and chose the abolished oral *quota litis*.

4. Judge Candal discarded the ethical mess, in violation of the doctrine of unclean hands.

5. Judge Candal disobey the stay order of the federal court and was later separated from the case.

6. Judge Candal locked-in the appellant, because it had been later

globalization. Both the 1789 Declaration and Puerto Rico's Constitution state that "property rights are sacred and inviolable." Civil Law tradition considered them to be one of the "general principles of law" that stand above the Constitution.

2. STATEMENT OF ISSUES:

1. The District Court, or Court *a quo*, dismissed this case with a short and simple statement: ". . . . Lack of jurisdiction and judges' immunity;" six (6) words. Such laconic action encroaches upon and is an obstacle to the Appellant's right to appeal because the difficulty to guess the fundaments of such drastic action is a violation of due process of law at a simple glance.

2. The Court *a quo* has jurisdiction in this case where the appellant's lawyer became a millionaire and his client became an indigent whom the lawyer removed from his business and livelihood. Under the guise of an oral *quota litis*, he deprived the Plaintiff of his entire

property to collect the sum of two million dollars because he claimed to have the right to said *quota litis*, an instrument abolished under the Civil Rights Act and the state case of ITT Intermedia 1997.

3. A discrimination of not only collecting a *quota litis* of 1/3 of all his properties, but also in the disregard for the ethical code and the violation of the statute of fraud that prohibits oral evidence to avoid fraud and perjury as is the case. In addition, he also constructed a false record of hours of 11,833, and then claimed that this record was a sufficient comparison to the *quota litis*, something that a mere glance is a contradiction as to the existence of such oral *quota litis*.

4. The District Court made a major mistake in saying that judges are immune when the doctrine established in Huminski v. Rutland County holds that they are not if civil rights are violated. Cf. DV2001, 148

F. Supp. 2d. 373. Even Justice Cardozo referred to it as the "trumpet call."

3. STATEMENT OF THE CASE

1. Roberto Palou Bosch, the appellee, is a young attorney with one year's of experience when this case was handed down to him in 1986 by a colleague.

2. Appellant is the owner of a business entitled Macelo La Muda, a slaughter house in the jurisdiction of Guaynabo, Puerto Rico, together with two other partners.

3. After the third partner, Lozada, was left out of the business, Palou told the Appellant that his equal part (1/3) in the business was his. In conspiracy with the other lawyer representing the other partner, Jorge Morales, they proceeded to take money from the gains of the business,

4. After his suspension from legal practice, the ethical mess continued as he remained part of this case

and asked the Appellant to financially support him in the form of car payments and his child's private school tuition.

5. He filed a complaint collecting a seven million (7,000,000) dollar fee in violation of the statute of limitations of three years and with a malicious understatement that he only took $58,000.00. However, during the trial, he was forced to admit that the amount was a much more significant $110,000.00.

6. He built up a record of non-contemporaneous work in the astonishing amount of 11,883 hours; a fraud and perjury, and then switched to a *quota litis* of 1/3 of Appellant's property.

7. He inflated the value of the Macelo La Muda in order to collect a fee of two million dollars and appraised all the property, good will and incomes.

4. DISCUSSION OF ERRORS

FIRST ERROR- LACONIC DISMISSAL

Violates the due process of law, shocks the conscience and is an obstruction to the right to appeal for lacking the fundaments. Even Judge Cardozo said it magistrally:

> "The judge, even when he is free,
> is still not wholly free. He is not
> to innovate at pleasure. He is not
> a knight-errant roaming at will
> in pursuit of his own ideal of
> beauty or of goodness.
> He is to draw his inspiration
> from consecrated principles.

How do we know this is a laconic expression?

> He is to exercise a discretion
> informed by tradition, metho-
> dized by analogy, disciplined
> by system, and subordinated
> to the primordial necessity
> of order in the social life."

How we accomplish this in a laconic expression?

> Cf. "THE NATURE OF THE
> JUDICIAL PROCESS,: 141p.

The legal authority Condomines Valls said in Article 6 of the Civil Code of Spain and Article 7 in the case of Puerto Rico that the judge has to give the

fundaments, in colors; so that the institution can be studied.

Cf. "EL RECURSO DE CASACION
EN MATERIA CIVIL, 26p.

1. After Appellant moved to the Bankruptcy Court to protect himself, he asked the Judge to disobey the stay order and moved the court to kick him out, lock him out. That is the same civil rights violation as a lock-in.

2. He embargoed all the properties of his descendents, including the parts of their wives that have no relevance in the case.

SECOND ERROR-JURISDICTION

-SECTION 1983-

The appellee Roberto Palou Bosch severely violated the code of ethics in this case and cheated in many areas, He cheated the Court, his client and the Ethical code. He deprived his client (the appellant) of his property under the guise of a *quota litis* of two million